

COMMITTEE ON PUBLIC SAFETY AND HUMAN SERVICES

SENATE AMENDMENTS TO H.B. 2395

(Reference to House engrossed bill)

Strike everything after the enacting clause and insert:

"Section 1. Section 5-302, Arizona Revised Statutes, is amended to read:

5-302. Application of chapter

A. ~~The provisions of~~ This chapter ~~apply~~ APPLIES to all watercraft operating on all of the waterways of this state, including that part of waters THAT IS common to interstate boundaries ~~which~~ AND THAT is within the boundaries of this state, excluding vessels owned by agencies of the federal government in performance of their official duties.

B. ~~The provisions of~~ Section 5-391, subsections ~~F and~~ G AND H and sections ~~5-329~~ 5-392 and 5-393 apply to all watercraft in this state, whether or not operating on waterways of this state, and includes watercraft operating on waterways that are part of water THAT IS common to interstate boundaries ~~which are~~ AND THAT IS within the boundaries of this state.

Sec. 2. Section 5-321.01, Arizona Revised Statutes, is amended to read:

5-321.01. Staggered watercraft registration; rules

A. The commission shall establish a system of staggered registration on a monthly basis in order to distribute the work of registering watercraft as uniformly as practicable throughout the twelve months of the calendar year.

B. All watercraft registrations provided for in this article expire in accordance with the schedules established by the commission. The commission may set the number of renewal periods within a month from one each month to one each day depending on which system is most economical and best accommodates the public.

C. The commission, in order to initiate the staggered registration system, may register a watercraft for a period of greater or less than twelve months up to a period of ~~eighteen~~ THIRTY-SIX months. If a registration period is set for a period other than twelve months the commission may prorate the registration fee.

D. The commission shall adopt rules necessary to accomplish the purposes of this section.

Sec. 3. Section 5-349, Arizona Revised Statutes, is amended to read:

5-349. Watercraft casualties; violation; classification

A. The operator of a watercraft involved in a collision, accident or other casualty ~~shall~~, to the extent the operator can do so without serious danger to the operator's own watercraft or persons aboard, SHALL:

1           1. IMMEDIATELY STOP THE WATERCRAFT AT THE SCENE OF THE COLLISION,  
2           ACCIDENT OR OTHER CASUALTY OR AS CLOSE TO THE SCENE OF THE COLLISION,  
3           ACCIDENT OR OTHER CASUALTY AS POSSIBLE BUT SHALL IMMEDIATELY RETURN TO THE  
4           SCENE.

5           2. Render all practical and necessary assistance to persons affected  
6           to save them from danger caused by the collision, accident or OTHER casualty.

7           3. REMAIN AT THE SCENE OF THE COLLISION, ACCIDENT OR OTHER CASUALTY  
8           UNTIL THE OPERATOR HAS COMPLIED WITH SUBSECTION B OF THIS SECTION.

9           B. The operator of a watercraft involved in a collision, accident or  
10          other casualty shall give the operator's name and address and the  
11          identification of the operator's watercraft to any person injured and to the  
12          owners of any property damaged.

13          C. Whenever death or injury results from any watercraft collision,  
14          accident or other casualty, a written report shall be submitted within  
15          forty-eight hours. For every other collision, accident or other casualty  
16          involving property damage exceeding five hundred dollars, a report shall be  
17          submitted within five days after the incident by the operator or owner of the  
18          watercraft involved. Written reports shall be submitted directly to the  
19          department for use in statistical studies for casualty prevention. Reports  
20          shall not be used as evidence in any trial, civil or criminal, arising from  
21          any collision, accident or other casualty. ~~Upon~~ ON request, a report shall  
22          be forwarded to the United States coast guard or other authorized federal  
23          agency to be used in statistical studies for casualty prevention.

24          D. To maintain uniformity, watercraft casualty reports shall be on a  
25          form approved by the commission.

26          E. Every peace officer who, in the regular course of duty,  
27          investigates any watercraft collision, accident or other casualty involving  
28          death or personal injury or involving property damage exceeding five hundred  
29          dollars shall prepare and transmit a report to the department pursuant to  
30          subsection C of this section.

31          F. If the operator of a watercraft is involved in a collision or  
32          accident that results in death or serious physical injury, as defined in  
33          section 13-105, and the operator fails to stop or comply with the  
34          requirements of subsection A of this section, the operator is guilty of a  
35          class 5 felony. If the operator of a watercraft is involved in a collision  
36          or accident that results in injury other than death or serious physical  
37          injury and the operator fails to stop and comply with the requirements of  
38          subsection A of this section, the operator is guilty of a class 6 felony. If  
39          the operator of a watercraft is involved in a collision or accident that  
40          results only in damage to another watercraft that is operated or attended by  
41          another person, and the operator fails to stop and comply with the  
42          requirements of subsection B of this section, the operator is guilty of a  
43          class 3 misdemeanor.

44          Sec. 4. Section 5-391, Arizona Revised Statutes, is amended to read:

45          5-391. Enforcement; violation; classification

46          A. Any person who violates any provision of this chapter, except  
47          section 5-341, subsection A, B, C or D, section 5-349, section 5-350,  
48          subsection C, section 5-393, 5-395, 5-396 or 5-397 and subsection C, ~~For~~ D,  
49          G OR H of this section or any rule issued thereunder, is guilty of a petty

1 offense. Any person who violates section 5-350, subsection C ~~or subsection C~~  
2 ~~of this section~~ is guilty of a class 2 misdemeanor.

3 B. All peace officers of the state, counties and cities shall enforce  
4 the provisions of this chapter and all laws and rules relating to the  
5 operation of watercraft.

6 C. In the enforcement of this chapter, the operator of the watercraft  
7 ~~upon~~ ON being hailed by any peace officer shall stop immediately and lay to,  
8 or maneuver in such a way as to permit the peace officer to come aboard or  
9 alongside. The operator may be ordered ashore to correct any unlawful  
10 condition, issued a written warning or written repair order, ~~or~~ or issued a  
11 citation for any violation of this chapter.

12 D. AN OPERATOR OF A WATERCRAFT WHO WILFULLY FLEES OR ATTEMPTS TO ELUDE  
13 A PURSUING LAW ENFORCEMENT OFFICER ISSUING AN ORDER PURSUANT TO SUBSECTION C  
14 OF THIS SECTION IS GUILTY OF A CLASS 5 FELONY. THE LAW ENFORCEMENT  
15 WATERCRAFT SHALL BE APPROPRIATELY MARKED TO SHOW THAT IT IS AN OFFICIAL LAW  
16 ENFORCEMENT WATERCRAFT.

17 ~~D.~~ E. In the enforcement of this chapter, ~~the provisions of~~ sections  
18 13-2506 and 13-3903 ~~shall~~ apply.

19 ~~E.~~ F. Each failure to obey an order or to comply with a warning order  
20 issued under ~~the provisions of~~ subsection C of this section shall constitute  
21 a separate offense punishable as a separate violation of this chapter.

22 ~~F.~~ G. A person is guilty of a class 6 felony who knowingly removes,  
23 defaces, obliterates, changes, alters or causes to be removed, defaced,  
24 obliterated, changed or altered a factory, engine, serial, outdrive, lower  
25 unit, power trim or hull identification number or mark on a watercraft.

26 ~~G.~~ H. A person is guilty of a class 2 misdemeanor who:

27 1. Knowingly displays or has in ~~his~~ THE PERSON'S possession a  
28 fictitious, stolen, revoked or altered certificate of number, department  
29 issued number or annual decal.

30 2. Lends to or knowingly permits the use of ~~his~~ THE PERSON'S  
31 certificate of number, department issued number or annual decal on a  
32 watercraft for which those items have not been issued.

33 ~~H.~~ I. ~~Upon~~ ON receipt of notice of conviction of a person under  
34 subsection ~~F~~ ~~or~~ G OR H of this section, the department may revoke the numbers  
35 and decals issued to the watercraft ~~which~~ THAT was involved in the violation  
36 and any other watercraft owned by the person convicted.

37 Sec. 5. Section 5-395, Arizona Revised Statutes, is amended to read:

38 5-395. Operating or in actual physical control of a motorized  
39 watercraft while intoxicated; violation;  
40 classification; definition

41 A. It is unlawful for any person to operate or be in actual physical  
42 control of a motorized watercraft that is underway within this state under  
43 any of the following circumstances:

44 1. While under the influence of intoxicating liquor, any drug, a vapor  
45 releasing substance containing a toxic substance or any combination of  
46 liquor, drugs or vapor releasing substances if the person is impaired to the  
47 slightest degree.

1           2. If the person has an alcohol concentration of 0.08 or more within  
2 two hours of operating or being in actual physical control of the motorized  
3 watercraft and the alcohol concentration results from alcohol consumed either  
4 before or while operating or being in actual physical control of the  
5 motorized watercraft.

6           3. While there is any drug as defined in section 13-3401 or its  
7 metabolite in the person's body.

8           4. If the motorized watercraft is a commercial motorized watercraft  
9 and the person has an alcohol concentration of 0.04 or more.

10          B. It is not a defense to a charge of a violation of subsection A,  
11 paragraph 1 of this section that the person is or has been entitled to use  
12 the drug under the laws of this state.

13          C. A person using a drug prescribed by a medical practitioner licensed  
14 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating  
15 subsection A, paragraph 3 of this section.

16          ~~E.~~ D. The state shall not dismiss a charge of violating this section  
17 for either of the following:

18           1. In return for a plea of guilty or no contest to any other offense  
19 by the person charged with the violation of this section.

20           2. For the purpose of pursuing any other misdemeanor or a petty  
21 offense, including those arising out of the same event or course of conduct,  
22 unless there is clearly an insufficient legal or factual basis to pursue the  
23 charge of violating this section.

24          ~~D.~~ E. In any prosecution for a violation of this section the state,  
25 for the purpose of classification and sentencing pursuant to section 5-395.01  
26 or 5-396, shall allege all prior convictions of violating this section  
27 occurring within the past ~~thirty-six~~ EIGHTY-FOUR months, unless there is  
28 clearly an insufficient legal or factual basis to do so.

29          ~~E.~~ F. In ~~any~~ A trial, action or proceeding for a violation of this  
30 section or section 5-396 other than a trial, action or proceeding involving  
31 operating or being in actual physical control of a commercial motorized  
32 watercraft, the defendant's alcohol concentration within two hours of the  
33 time of operating or being in actual physical control as shown by analysis of  
34 the defendant's blood, breath or other bodily substance gives rise to the  
35 following presumptions:

36           1. If there was at that time 0.05 or less alcohol concentration in the  
37 defendant's blood, breath or other bodily substance, it may be presumed that  
38 the defendant was not under the influence of intoxicating liquor.

39           2. If there was at that time in excess of 0.05 but less than 0.08  
40 alcohol concentration in the defendant's blood, breath or other bodily  
41 substance, such fact shall not give rise to any presumption that the  
42 defendant was or was not under the influence of intoxicating liquor, but such  
43 fact may be considered with other competent evidence in determining the guilt  
44 or innocence of the defendant.

45           3. If there was at that time 0.08 or more alcohol concentration in the  
46 defendant's blood, breath or other bodily substance, it may be presumed that  
47 the defendant was under the influence of intoxicating liquor.

1           G. ~~Paragraph 1, 2 or 3~~ SUBSECTION F of this ~~subsection~~ SECTION shall  
2 not be construed as limiting the introduction of any other competent evidence  
3 bearing on the question of whether or not the defendant was under the  
4 influence of intoxicating liquor.

5           ~~F.~~ H. If a blood test is administered, only a physician, a registered  
6 nurse or another qualified person may withdraw blood for the purpose of  
7 determining the alcohol concentration or drug content. The qualifications of  
8 the individual withdrawing the blood and the method used to withdraw the  
9 blood are not foundational prerequisites for the admissibility of any blood  
10 alcohol content determination made pursuant to this subsection.

11          ~~G.~~ I. If a law enforcement officer administers a duplicate breath  
12 test and the person tested is given a reasonable opportunity to arrange for  
13 an additional test pursuant to subsection ~~H~~ J of this section, a sample of  
14 the person's breath does not have to be collected or preserved.

15          ~~H.~~ J. The person tested shall be given a reasonable opportunity to  
16 arrange for any physician, registered nurse or other qualified person of the  
17 tested person's own choosing to administer a test or tests in addition to any  
18 administered at the direction of a law enforcement officer. The failure or  
19 inability to obtain an additional test by a person does not preclude the  
20 admission of evidence relating to the test or tests taken at the direction of  
21 a law enforcement officer.

22          ~~I.~~ K. If a person under arrest refuses to submit to a test or tests  
23 under section 5-395.03, whether or not a sample was collected pursuant to  
24 subsection ~~J~~ L of this section or a search warrant, evidence of refusal is  
25 admissible in any civil or criminal action or other proceeding. The issue of  
26 refusal shall be an issue of fact to be determined by the trier of fact in  
27 all cases.

28          ~~J.~~ L. Notwithstanding any other law, if a law enforcement officer has  
29 probable cause to believe that a person has violated this section and a  
30 sample of blood, urine or any other bodily substance is taken from that  
31 person for any reason a portion of that sample sufficient for analysis shall  
32 be provided to a law enforcement officer if requested for law enforcement  
33 purposes. A person who fails to comply with this subsection is guilty of a  
34 class 1 misdemeanor.

35          ~~K.~~ M. A person who collects blood, urine or any other bodily  
36 substance under this section or any hospital, laboratory or clinic employing  
37 or utilizing the services of the person does not incur any civil liability as  
38 a result of this activity if requested by a law enforcement officer to  
39 collect blood, urine or any other bodily substances unless the person, while  
40 performing the activity, acts with gross negligence.

41          ~~L.~~ N. A statement by the defendant that the defendant was operating a  
42 motorized watercraft that was underway and that was involved in an accident  
43 resulting in injury to or death of any person is admissible in any criminal  
44 proceeding without further proof of corpus delicti if it is otherwise  
45 admissible.

46          ~~M.~~ O. At the arraignment, the court shall inform the defendant that  
47 the defendant may request a trial by jury and that the request, if made,  
48 shall be granted.

1           ~~N.~~ P. ~~In~~ FOR THE PURPOSES OF this section, "alcohol concentration"  
2 means grams of alcohol per one hundred milliliters of blood or grams of  
3 alcohol per two hundred ten liters of breath.

4           Sec. 6. Section 5-395.01, Arizona Revised Statutes, is amended to  
5 read:

6           5-395.01. Operating or in actual physical control of a  
7                           motorized watercraft while intoxicated;  
8                           classification; penalties

9           A. A person who is convicted of a violation of section 5-395 is guilty  
10 of a class 1 misdemeanor. The person:

11           1. SHALL BE SENTENCED TO SERVE NOT LESS THAN TEN CONSECUTIVE DAYS IN  
12 JAIL AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE  
13 UNLESS THE ENTIRE SENTENCE IS SERVED.

14           2. Shall pay a fine of not less than two hundred fifty dollars. ~~In~~  
15 ~~addition to any other penalties under this section, the judge shall order the~~  
16 ~~person to complete alcohol or other drug screening that is provided by a~~  
17 ~~facility approved by the department of health services or a probation~~  
18 ~~department. If a judge determines that the person requires further alcohol~~  
19 ~~or other drug education or treatment, the person may be required pursuant to~~  
20 ~~court order to obtain alcohol or other drug education or treatment under the~~  
21 ~~court's supervision from an approved facility. The judge may review an~~  
22 ~~education or treatment determination at the request of the state or the~~  
23 ~~defendant or on the judge's initiative. The person shall pay the costs of~~  
24 ~~the screening, education or treatment unless the court waives part or all of~~  
25 ~~the costs.~~

26           3. MAY BE ORDERED BY A COURT TO PERFORM COMMUNITY RESTITUTION.

27           4. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE  
28 DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS  
29 FUND ESTABLISHED BY SECTION 41-1651. THIS ASSESSMENT IS NOT SUBJECT TO ANY  
30 SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE  
31 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER.  
32 IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE  
33 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL  
34 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

35           5. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE  
36 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT  
37 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR  
38 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE  
39 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT  
40 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY  
41 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

42           B. IN ADDITION TO ANY OTHER PENALTIES UNDER THIS SECTION, THE JUDGE  
43 SHALL ORDER THE PERSON TO COMPLETE ALCOHOL OR OTHER DRUG SCREENING THAT IS  
44 PROVIDED BY A FACILITY APPROVED BY THE DEPARTMENT OF HEALTH SERVICES OR A  
45 PROBATION DEPARTMENT. IF A JUDGE DETERMINES THAT THE PERSON REQUIRES FURTHER  
46 ALCOHOL OR OTHER DRUG EDUCATION OR TREATMENT, THE PERSON MAY BE REQUIRED  
47 PURSUANT TO COURT ORDER TO OBTAIN ALCOHOL OR OTHER DRUG EDUCATION OR  
48 TREATMENT UNDER THE COURT'S SUPERVISION FROM AN APPROVED FACILITY. THE JUDGE  
49 MAY REVIEW AN EDUCATION OR TREATMENT DETERMINATION AT THE REQUEST OF THE

1 STATE OR THE DEFENDANT OR ON THE JUDGE'S INITIATIVE. THE PERSON SHALL PAY  
2 THE COSTS OF THE SCREENING, EDUCATION OR TREATMENT UNLESS THE COURT WAIVES  
3 PART OR ALL OF THE COSTS. IF A PERSON IS REFERRED TO A SCREENING, EDUCATION  
4 OR TREATMENT FACILITY, THE FACILITY SHALL REPORT TO THE COURT WHETHER THE  
5 PERSON HAS SUCCESSFULLY COMPLETED THE SCREENING, EDUCATION OR TREATMENT  
6 PROGRAM.

7 ~~B.~~ C. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 1 OF THIS SECTION AND  
8 except as provided in section 5-398.01, the ~~court~~ JUDGE may EITHER:

9 1. Suspend any imposed sentence for a first violation of section 5-395  
10 if the person completes a court ordered alcohol or other drug screening,  
11 education or treatment program. If the person fails to complete the court  
12 ordered alcohol or other drug screening, education or treatment program and  
13 has not been placed on probation, the court shall issue an order to show  
14 cause to the defendant as to why the remaining jail sentence should not be  
15 served.

16 2. SUSPEND ALL BUT TWENTY-FOUR CONSECUTIVE HOURS OF THE SENTENCE IF  
17 THE PERSON COMPLETES A COURT ORDERED ALCOHOL OR OTHER DRUG SCREENING,  
18 EDUCATION OR TREATMENT PROGRAM IF THE COURT DETERMINES THE PERSON RECKLESSLY  
19 ENDANGERED ANOTHER PERSON WITH A SUBSTANTIAL RISK OF INJURY. IF THE PERSON  
20 FAILS TO COMPLETE THE COURT ORDERED ALCOHOL OR OTHER DRUG SCREENING,  
21 EDUCATION OR TREATMENT PROGRAM AND HAS NOT BEEN PLACED ON PROBATION, THE  
22 COURT SHALL ISSUE AN ORDER TO SHOW CAUSE TO THE DEFENDANT AS TO WHY THE  
23 REMAINING JAIL SENTENCE SHOULD NOT BE SERVED.

24 ~~C. A court may order a person sentenced pursuant to this section to~~  
25 ~~perform community restitution.~~

26 D. ~~Notwithstanding subsection B of this section,~~ If within a period of  
27 ~~sixty~~ EIGHTY-FOUR months a person is convicted of a second violation of  
28 section 5-395 or is convicted of a violation of section 5-395 and has  
29 previously been convicted of an act in another ~~state~~ JURISDICTION that if  
30 committed in this state would be a violation of section 5-395, the person:

31 1. Shall be sentenced to serve not less than ninety days in jail,  
32 thirty days of which shall be served consecutively, and ~~the person~~ is not  
33 eligible for probation or suspension of execution of sentence unless the  
34 entire sentence has been served. ~~, except that the judge may suspend at the~~  
35 ~~time of sentencing all but thirty days of the sentence if the person~~  
36 ~~completes a court ordered alcohol or other drug screening, education or~~  
37 ~~treatment program. If the person fails to complete the court ordered alcohol~~  
38 ~~or other drug screening, education or treatment program and has not been~~  
39 ~~placed on probation, the court shall issue an order to show cause as to why~~  
40 ~~the remaining jail sentence should not be served. The judge~~

41 2. Shall ~~order the person to~~ pay a fine of not less than five hundred  
42 dollars.

43 3. SHALL BE ORDERED BY THE COURT TO PERFORM AT LEAST THIRTY HOURS OF  
44 COMMUNITY RESTITUTION. IF THE PERSON FAILS TO COMPLETE THE COMMUNITY  
45 RESTITUTION ORDERED PURSUANT TO THIS PARAGRAPH, THE COURT MAY ORDER  
46 ALTERNATIVE SANCTIONS IF THE COURT DETERMINES THAT ALTERNATIVE SANCTIONS ARE  
47 MORE APPROPRIATE.



1           4. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED  
2 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON  
3 CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS  
4 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN  
5 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED  
6 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL  
7 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.  
8 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE  
9 TREASURER.

10           5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED  
11 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL  
12 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION  
13 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT  
14 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A  
15 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY  
16 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED  
17 TO THE STATE TREASURER.

18           E. NOTWITHSTANDING SUBSECTION D, PARAGRAPH 1 OF THIS SECTION, AT THE  
19 TIME OF SENTENCING, EXCEPT IF THE COURT DETERMINES THE PERSON RECKLESSLY  
20 ENDANGERED ANOTHER PERSON WITH A SUBSTANTIAL RISK OF INJURY, THE JUDGE MAY  
21 SUSPEND ALL BUT THIRTY DAYS OF THE SENTENCE IF THE PERSON COMPLETES A COURT  
22 ORDERED ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM. IF  
23 THE PERSON FAILS TO COMPLETE THE COURT ORDERED ALCOHOL OR OTHER DRUG  
24 SCREENING, EDUCATION OR TREATMENT PROGRAM AND HAS NOT BEEN PLACED ON  
25 PROBATION, THE COURT SHALL ISSUE AN ORDER TO SHOW CAUSE AS TO WHY THE  
26 REMAINING JAIL SENTENCE SHOULD NOT BE SERVED.

27           ~~E. F. The dates of the commission of the offense are the determining~~  
28 ~~factor~~ In applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection D of  
29 this section, THE DATES OF THE COMMISSION OF THE OFFENSE SHALL BE THE  
30 DETERMINING FACTOR irrespective of the sequence in which the offenses were  
31 committed.

32           G. A second violation for which a conviction occurs as provided in  
33 this section shall not include a conviction for an offense arising out of the  
34 same series of acts.

35           ~~F. If a person is referred to a screening or treatment facility, that~~  
36 ~~facility shall report to the court whether the person has successfully~~  
37 ~~completed the screening, education or treatment program.~~

38           ~~G.~~ H. Any political subdivision processing or utilizing the services  
39 of a person ordered to perform community restitution pursuant to this section  
40 does not incur any civil liability to the person ordered to perform community  
41 restitution as a result of these activities unless the political subdivision  
42 or its agent or employee acts with gross negligence.

43           ~~H.~~ I. After a person who is sentenced pursuant to subsection ~~B~~ A of  
44 this section has served twenty-four consecutive hours in jail or after a  
45 person who is sentenced pursuant to subsection D of this section has served  
46 forty-eight consecutive hours in jail and after receiving confirmation that  
47 the person is employed or is a student, the court, on pronouncement of any  
48 jail sentence under this section, may provide in the sentence that the person  
49 may be permitted, if the person is employed or is a student and can continue



1 the person's employment or studies, to continue such employment or studies  
2 for not more than twelve hours per day nor more than five days per week, and  
3 the remaining day, days or parts of days shall be spent in jail until the  
4 sentence is served. The person shall be allowed out of jail only long enough  
5 to complete the actual hours of employment or studies and no longer.

6 ~~I.~~ J. A person who is sentenced pursuant to this section is eligible  
7 for a home detention program pursuant to the provisions of section 9-499.07,  
8 subsections M through R or section 11-459, subsections L through Q.

9 ~~J.~~ K. The court shall allow the allegation of a prior conviction or  
10 other pending charge of a violation of section 5-395 filed twenty or more  
11 days before the date the case is actually tried and may allow the allegation  
12 of a prior conviction or other pending charge of a violation of section 5-395  
13 filed any time before the date the case is actually tried, provided that when  
14 the allegation is filed this state must make available to the defendant a  
15 copy of any information obtained concerning the prior conviction or other  
16 pending charge. Any conviction may be used to enhance another conviction  
17 irrespective of the dates on which the offenses occurred within the ~~sixty~~  
18 ~~EIGHTY-FOUR~~ month provision.

19 ~~K.~~ L. If a person is placed on probation for violating section 5-395,  
20 the probation shall be supervised unless the court finds that supervised  
21 probation is not necessary or the court does not have supervisory probation  
22 services.

23 ~~L. Persons who are convicted pursuant to section 5-395 shall pay an~~  
24 ~~additional assessment of five hundred dollars or, if the person is convicted~~  
25 ~~of a second violation pursuant to subsection D of this section, shall pay an~~  
26 ~~additional assessment of one thousand two hundred fifty dollars to be~~  
27 ~~deposited by the state treasurer in the prison construction and operations~~  
28 ~~fund established by section 41-1651. These assessments are not subject to~~  
29 ~~any surcharge. If the conviction occurred in the superior court or a justice~~  
30 ~~court, the court shall transmit the assessed monies to the county treasurer.~~  
31 ~~If the conviction occurred in a municipal court, the court shall transmit the~~  
32 ~~assessed monies to the city treasurer. The city or county treasurer shall~~  
33 ~~transmit the monies received to the state treasurer.~~

34 ~~M. Persons convicted pursuant to section 5-395 shall pay an additional~~  
35 ~~assessment of five hundred dollars or for a second violation pursuant to~~  
36 ~~subsection D of this section shall pay an additional assessment of one~~  
37 ~~thousand two hundred fifty dollars to be deposited by the state treasurer in~~  
38 ~~the state general fund. These assessments are not subject to any surcharge.~~  
39 ~~If the conviction occurred in the superior court or a justice court, the~~  
40 ~~court shall transmit the assessed monies to the county treasurer. If the~~  
41 ~~conviction occurred in a municipal court, the court shall transmit the~~  
42 ~~assessed monies to the city treasurer. The city or county treasurer shall~~  
43 ~~transmit the monies received to the state treasurer.~~

44 Sec. 7. Section 5-395.02, Arizona Revised Statutes, is amended to  
45 read:

46 5-395.02. Admissibility of breath test or other records

47 A. The results of a breath test administered for the purpose of  
48 determining a person's alcohol concentration as defined in section 5-395 are

1 admissible as evidence in any trial, action or proceeding on establishing the  
2 following foundational requirements:

3 1. The test was performed using a quantitative breath testing device  
4 approved by the ~~department of health services or the~~ department of public  
5 safety. A properly authenticated certification by the ~~department of health~~  
6 ~~services or the~~ department of public safety or judicial notice of ~~department~~  
7 ~~of health services or~~ department of public safety rules is sufficient to  
8 establish this requirement.

9 2. The operator who conducted the test possessed a valid permit issued  
10 by the department of health services or the department of public safety to  
11 operate the device used to conduct the test.

12 3. Duplicate tests were administered and the test results were within  
13 0.02 alcohol concentration of each other ~~or~~ AND an operator observed the  
14 person charged with the violation for ~~twenty~~ FIFTEEN minutes immediately  
15 preceding the administration of the test.

16 4. The operator who conducted the test followed an operational  
17 checklist approved by the ~~department of health services or the~~ department of  
18 public safety for the operation of the device used to conduct the test. The  
19 testimony of the operator is sufficient to establish this requirement.

20 5. The device used to conduct the test was in proper operating  
21 condition. Records of periodic maintenance that show that the device was in  
22 proper operating condition are admissible in any proceeding as prima facie  
23 evidence that the device was in proper operating condition at the time of the  
24 test. Calibration checks with a standard alcohol concentration solution  
25 bracketing each person's duplicate breath test are one type of records of  
26 periodic maintenance that satisfies the requirements of this section. The  
27 records are public records.

28 B. Compliance with subsection A of this section is the only  
29 requirement for the admission in evidence of a breath test result.

30 C. The inability of any person to obtain manufacturer's schematics and  
31 software for a quantitative breath testing device that is approved as  
32 prescribed in subsection A of this section shall not affect the admissibility  
33 of the results of a breath test pursuant to this section.

34 D. Records that may be obtained or are otherwise maintained pursuant  
35 to section 28-1327 are admissible as evidence in any trial, action or  
36 proceeding.

37 Sec. 8. Section 5-395.03, Arizona Revised Statutes, is amended to  
38 read:

39 5-395.03. Test for alcohol concentration or drug content;  
40 refusal

41 A. Any person who operates a motorized watercraft that is underway  
42 within this state ~~shall submit~~ GIVES CONSENT, subject to section 4-244,  
43 paragraph 34, section 5-395 or section 5-396, to a test or tests of the  
44 person's blood, breath, urine or other bodily substance for the purpose of  
45 determining alcohol concentration or drug content if the person is arrested  
46 for any offense arising out of acts alleged to have been committed in  
47 violation of this chapter or section 4-244, paragraph 34 while the person was  
48 operating or in actual physical control of a motorized watercraft that was  
49 underway while under the influence of intoxicating liquor or drugs. The test

1 or tests chosen by the law enforcement agency shall be administered at the  
2 direction of a law enforcement officer having reasonable grounds to believe  
3 the person to have been operating or in actual physical control of a  
4 motorized watercraft that is underway within this state while under the  
5 influence of intoxicating liquor or drugs, or if the person is under  
6 twenty-one years of age, with spirituous liquor in the person's body.

7 B. Following an arrest a violator shall be requested to submit to and  
8 successfully complete any test or tests prescribed by subsection A of this  
9 section. ~~, and if the violator refuses the violator shall be informed that~~  
10 ~~the violator is subject to a civil penalty.~~

11 ~~C. A person who refuses any test or tests prescribed by subsection A~~  
12 ~~of this section is subject to a civil penalty of seven hundred fifty dollars~~  
13 ~~and shall pay an additional civil penalty of five hundred dollars to be~~  
14 ~~deposited by the state treasurer in the prison construction and operations~~  
15 ~~fund established by section 41-1651. The additional civil penalty of five~~  
16 ~~hundred dollars is not subject to any surcharge. If the additional civil~~  
17 ~~penalty is imposed by the superior court or a justice court, the court shall~~  
18 ~~transmit the amount collected for the additional civil penalty to the county~~  
19 ~~treasurer. If the additional civil penalty is imposed by a municipal court,~~  
20 ~~the court shall transmit the amount collected for the additional civil~~  
21 ~~penalty to the city treasurer. The city or county treasurer shall transmit~~  
22 ~~the monies received pursuant to this subsection to the state treasurer.~~

23 ~~D.~~ C. If a person under arrest refuses to submit to the test  
24 designated by the law enforcement agency as provided in subsection A of this  
25 section none shall be given, except as provided in section 5-395, subsection  
26 ~~J~~ L or pursuant to a search warrant.

27 Sec. 9. Section 5-395.04, Arizona Revised Statutes, is amended to  
28 read:

29 5-395.04. Preliminary breath tests: authority

30 A. A law enforcement officer who has reasonable suspicion to believe  
31 that a person has committed a violation of section 5-395 may request that the  
32 person submit to a preliminary breath test or tests before an arrest.

33 B. In addition to a breath test or tests the officer may require that  
34 the person submit to further testing pursuant to section 5-395.03.

35 C. The director of the ~~department of health services or the~~ department  
36 of public safety shall adopt rules prescribing the approval of quantitative  
37 preliminary breath testing devices.

38 Sec. 10. Section 5-396, Arizona Revised Statutes, is amended to read:

39 5-396. Aggravated operating or actual physical control of  
40 motorized watercraft while under the influence of  
41 intoxicating liquor or drugs; classification

42 A. A person is guilty of aggravated operating or actual physical  
43 control of a motorized watercraft that is underway while under the influence  
44 of intoxicating liquor or drugs if the person DOES ANY OF THE FOLLOWING:

45 1. WITHIN A PERIOD OF EIGHTY-FOUR MONTHS commits a third or subsequent  
46 violation of section 5-395 or 5-397 or this section or is convicted of a  
47 violation of section 5-395 or 5-397 or this section and has previously been  
48 convicted of any combination of convictions of section 5-395 or 5-397 or this  
49 section or acts committed in another state JURISDICTION that if committed in

1 this state would be a violation of section 5-395 or 5-397 or this section  
2 ~~within a period of sixty months.~~

3 2. WHILE A PERSON UNDER FIFTEEN YEARS OF AGE IS ABOARD THE MOTORIZED  
4 WATERCRAFT, COMMITS ANY OF THE FOLLOWING:

5 (a) A FIRST VIOLATION OF SECTION 5-395, IF THE PERSON RECKLESSLY  
6 ENDANGERS THE PERSON WHO IS UNDER FIFTEEN YEARS OF AGE WITH A SUBSTANTIAL  
7 RISK OF PHYSICAL INJURY.

8 (b) A SECOND VIOLATION OF SECTION 5-395 WITHIN A PERIOD OF EIGHTY-FOUR  
9 MONTHS.

10 (c) A VIOLATION OF SECTION 5-397.

11 B. The dates of the commission of the offenses are the determining  
12 factor in applying the ~~sixty~~ EIGHTY-FOUR month provision provided in  
13 subsection A, PARAGRAPH 1 OR PARAGRAPH 2, SUBDIVISION (b) of this section  
14 regardless of the sequence in which the offenses were committed. For  
15 purposes of this section, a third or subsequent violation for which a  
16 conviction occurs does not include a conviction for an offense arising out of  
17 the same series of acts. THE TIME THAT A PROBATIONER IS FOUND TO BE ON  
18 ABSCONDER STATUS OR THE TIME THAT A PERSON IS INCARCERATED IN ANY STATE,  
19 FEDERAL, COUNTY OR CITY JAIL OR CORRECTIONAL FACILITY IS EXCLUDED WHEN  
20 DETERMINING THE EIGHTY-FOUR MONTH PERIOD PROVIDED IN SUBSECTION A, PARAGRAPH  
21 1, SUBSECTION A, PARAGRAPH 2, SUBDIVISION (b) AND SUBSECTION D OF THIS  
22 SECTION.

23 ~~C. Aggravated operating or actual physical control of a motorized~~  
24 ~~watercraft that is underway while under the influence of intoxicating liquor~~  
25 ~~or drugs is a class 4 felony.~~

26 ~~D. C. Notwithstanding section 41-1604.06,~~ A person who is convicted  
27 under subsection A, PARAGRAPH 1 of this section and who within ~~a~~ AN ~~sixty~~  
28 EIGHTY-FOUR month period has been convicted of two prior violations of  
29 section 5-395 or 5-397 or this section, or acts committed in another ~~state~~  
30 JURISDICTION that if committed in this state would be a violation of section  
31 5-395 or 5-397 or this section, is not eligible for probation, pardon,  
32 commutation or suspension of sentence or release on any other basis until the  
33 person has served not less than four months in prison.

34 ~~E. D. Notwithstanding section 41-1604.06,~~ A person who is convicted  
35 under subsection A, PARAGRAPH 1 of this section and who within ~~a~~ ~~sixty~~ AN  
36 EIGHTY-FOUR month period has been convicted of three or more prior violations  
37 of section 5-395 or 5-397 or this section, or acts committed in another state  
38 that if committed in this state would be a violation of section 5-395 or  
39 5-397 or this section, is not eligible for probation, pardon, commutation or  
40 suspension of sentence or release on any other basis until the person has  
41 served not less than eight months in prison.

42 E. A PERSON WHO IS CONVICTED UNDER SUBSECTION A, PARAGRAPH 2,  
43 SUBDIVISION (a) OR (b) OF THIS SECTION SHALL SERVE AT LEAST THE MINIMUM TERM  
44 OF INCARCERATION REQUIRED PURSUANT TO SECTION 5-395.

45 F. A PERSON WHO IS CONVICTED UNDER SUBSECTION A, PARAGRAPH 2,  
46 SUBDIVISION (c) OF THIS SECTION SHALL SERVE AT LEAST THE MINIMUM TERM OF  
47 INCARCERATION REQUIRED PURSUANT TO SECTION 5-397.

1           ~~F.~~ G. A person who is convicted of a violation of this section and  
2 who is placed on probation shall attend and complete alcohol or drug  
3 screening, counseling and education from an approved facility and, if ordered  
4 by the court, treatment from an approved facility. If the person fails to  
5 comply with this subsection, in addition to section 13-901 the court may  
6 order that the person be incarcerated as a term of probation as follows:

7           1. For a person sentenced pursuant to subsection D of this section,  
8 for an individual period of not more than four months and a total period of  
9 not more than one year.

10          2. For a person sentenced pursuant to subsection E of this section,  
11 for an individual period of not more than eight months and a total period of  
12 not more than two years.

13           ~~G.~~ H. The time that a person spends in custody pursuant to subsection  
14 ~~D, E or F~~ G of this section shall not be counted toward the sentence imposed  
15 if the person's probation is revoked and the person is sentenced to prison  
16 following revocation of probation.

17           I. ON CONVICTION FOR A VIOLATION OF THIS SECTION, THE COURT:

18           1. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL ORDER THE  
19 PERSON TO PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS. IF THE  
20 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL  
21 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION  
22 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES  
23 TO THE CITY TREASURER. THE MONIES SHALL BE USED BY THE COUNTY, CITY OR TOWN  
24 FOR EDUCATIONAL AND ENFORCEMENT PURPOSES, PROSECUTORIAL AND JUDICIAL  
25 ACTIVITIES AND ALCOHOL ABUSE TREATMENT SERVICES RELATED TO PREVENTING AND  
26 ABATING OPERATING UNDER THE INFLUENCE OCCURRENCES IN A MOTORIZED WATERCRAFT.  
27 ANY FINE IMPOSED FOR A VIOLATION OF THIS SECTION AND ANY ASSESSMENTS,  
28 RESTITUTION AND INCARCERATION COSTS SHALL BE PAID BEFORE THE ASSESSMENT  
29 PRESCRIBED IN THIS PARAGRAPH.

30           ~~H.~~ 2. ~~A~~ SHALL ORDER THE person ~~convicted of a violation of this~~  
31 ~~section shall~~ TO pay a fine of not less than seven hundred fifty dollars.

32           ~~I.~~ 3. In addition to any other penalty prescribed by law, ~~persons~~  
33 ~~convicted pursuant to this section~~ shall ORDER THE PERSON TO pay an  
34 additional assessment of one thousand five hundred dollars to be deposited by  
35 the state treasurer in the prison construction and operations fund  
36 established by section 41-1651. This assessment is not subject to any  
37 surcharge. If the conviction occurred in the superior court or a justice  
38 court, the court shall transmit the assessed monies to the county treasurer.  
39 If the conviction occurred in a municipal court, the court shall transmit the  
40 assessed monies to the city treasurer. The city or county treasurer shall  
41 transmit the monies received to the state treasurer.

42           ~~J.~~ 4. In addition to any other penalty prescribed by law, ~~persons~~  
43 ~~convicted pursuant to this section~~ shall ORDER THE PERSON TO pay an  
44 additional assessment of one thousand five hundred dollars to be deposited by  
45 the state treasurer in the state general fund. This assessment is not  
46 subject to any surcharge. If the conviction occurred in the superior court  
47 or a justice court, the court shall transmit the assessed monies to the  
48 county treasurer. If the conviction occurred in a municipal court, the court

1 shall transmit the assessed monies to the city treasurer. The city or county  
2 treasurer shall transmit the monies received to the state treasurer.

3 J. AGGRAVATED OPERATING OR ACTUAL PHYSICAL CONTROL OF A MOTORIZED  
4 WATERCRAFT THAT IS UNDERWAY WHILE UNDER THE INFLUENCE OF AN INTOXICATING  
5 LIQUOR OR DRUGS COMMITTED UNDER:

6 1. SUBSECTION A, PARAGRAPH 1 OF THIS SECTION IS A CLASS 4 FELONY.

7 2. SUBSECTION A, PARAGRAPH 2 OF THIS SECTION IS A CLASS 6 FELONY.

8 Sec. 11. Section 5-397, Arizona Revised Statutes, is amended to read:

9 5-397. Operating or in actual physical control of a motorized  
10 watercraft while under the extreme influence of  
11 intoxicating liquor; trial by jury; sentencing;  
12 classification; definition

13 A. It is unlawful for a person to operate or be in actual physical  
14 control of a motorized watercraft that is underway within this state if the  
15 person has an alcohol concentration ~~of 0.15 or more~~ AS FOLLOWS within two  
16 hours of operating or being in actual physical control of the motorized  
17 watercraft and the alcohol concentration results from alcohol consumed either  
18 before or while operating or being in actual physical control of the  
19 motorized watercraft:

20 1. 0.15 OR MORE BUT LESS THAN 0.20.

21 2. 0.20 OR MORE.

22 B. A person who is convicted of a violation of this section is guilty  
23 of operating or being in actual physical control of a motorized watercraft  
24 while under the extreme influence of alcohol.

25 C. At the arraignment, the court shall inform the defendant that the  
26 defendant may request a trial by jury and that the request, if made, shall be  
27 granted.

28 D. A person who is convicted of a violation of this section:

29 1. Shall be sentenced to serve not less than thirty consecutive days  
30 in jail and is not eligible for probation or suspension of execution of  
31 sentence unless the entire sentence is served IF THE PERSON IS CONVICTED OF A  
32 VIOLATION OF SUBSECTION A, PARAGRAPH 1 OF THIS SECTION. A PERSON WHO IS  
33 CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION SHALL  
34 BE SENTENCED TO SERVE NOT LESS THAN FORTY-FIVE CONSECUTIVE DAYS IN JAIL AND  
35 IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE UNLESS  
36 THE ENTIRE SENTENCE IS SERVED.

37 2. Shall pay a fine of not less than two hundred fifty dollars, EXCEPT  
38 THAT A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2  
39 OF THIS SECTION SHALL PAY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS. THE  
40 FINE PRESCRIBED IN THIS PARAGRAPH AND ANY ASSESSMENTS, RESTITUTION AND  
41 INCARCERATION COSTS SHALL BE PAID BEFORE THE ASSESSMENT PRESCRIBED IN  
42 PARAGRAPH 3 OF THIS SUBSECTION.

43 3. SHALL PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS.  
44 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE  
45 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE  
46 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE  
47 ASSESSED MONIES TO THE CITY TREASURER. THE MONIES SHALL BE USED BY THE  
48 COUNTY, CITY OR TOWN FOR EDUCATIONAL AND ENFORCEMENT PURPOSES, PROSECUTORIAL  
49 AND JUDICIAL ACTIVITIES AND ALCOHOL ABUSE TREATMENT SERVICES RELATED TO

1 PREVENTING AND ABATING OPERATING UNDER THE INFLUENCE OCCURRENCES IN A  
2 MOTORIZED WATERCRAFT.

3 ~~3-~~ 4. May be ordered by a court to perform community restitution.

4 ~~4-~~ 5. Shall pay an additional assessment of one thousand dollars to  
5 be deposited by the state treasurer in the prison construction and operations  
6 fund established by section 41-1651. This assessment is not subject to any  
7 surcharge. If the conviction occurred in the superior court or a justice  
8 court, the court shall transmit the assessed monies to the county treasurer.  
9 If the conviction occurred in a municipal court, the court shall transmit the  
10 assessed monies to the city treasurer. The city or county treasurer shall  
11 transmit the monies received to the state treasurer.

12 ~~5-~~ 6. Shall pay an additional assessment of one thousand dollars to  
13 be deposited by the state treasurer in the state general fund. This  
14 assessment is not subject to any surcharge. If the conviction occurred in  
15 the superior court or a justice court, the court shall transmit the assessed  
16 monies to the county treasurer. If the conviction occurred in a municipal  
17 court, the court shall transmit the assessed monies to the city treasurer.  
18 The city or county treasurer shall transmit the monies received to the state  
19 treasurer.

20 E. Notwithstanding subsection D, paragraph 1 of this section, at the  
21 time of sentencing IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,  
22 PARAGRAPH 1 OF THIS SECTION, the judge may suspend all but ten days of the  
23 sentence if the person completes a court ordered alcohol or other drug  
24 screening, education or treatment program. If the person fails to complete  
25 the court ordered alcohol or other drug screening, education or treatment  
26 program and has not been placed on probation, the court shall issue an order  
27 to show cause to the defendant as to why the remaining jail sentence should  
28 not be served.

29 F. If within a period of ~~sixty~~ EIGHTY-FOUR months a person is  
30 convicted of a second violation of this section or is convicted of a  
31 violation of this section and has previously been convicted of a violation of  
32 section 5-395 or 5-396 or an act in another jurisdiction that if committed in  
33 this state would be a violation of this section or section 5-395 or 5-396,  
34 the person:

35 1. Shall be sentenced to serve not less than one hundred twenty days  
36 in jail, sixty days of which shall be served consecutively, and is not  
37 eligible for probation or suspension of execution of sentence unless the  
38 entire sentence has been served IF THE PERSON IS CONVICTED OF A VIOLATION OF  
39 SUBSECTION A, PARAGRAPH 1 OF THIS SECTION. A PERSON WHO IS CONVICTED OF A  
40 VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION SHALL BE SENTENCED TO  
41 SERVE NOT LESS THAN ONE HUNDRED EIGHTY DAYS IN JAIL, NINETY OF WHICH SHALL BE  
42 SERVED CONSECUTIVELY, AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF  
43 EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE HAS BEEN SERVED.

44 2. Shall pay a fine of not less than five hundred dollars, EXCEPT THAT  
45 A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS  
46 SECTION SHALL PAY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS. THE FINE  
47 PRESCRIBED IN THIS PARAGRAPH AND ANY ASSESSMENTS, RESTITUTION AND  
48 INCARCERATION COSTS SHALL BE PAID BEFORE THE ASSESSMENT PRESCRIBED IN  
49 PARAGRAPH 3 OF THIS SUBSECTION.



1           3. SHALL PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS.  
2 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE  
3 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE  
4 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE  
5 ASSESSED MONIES TO THE CITY TREASURER. THE MONIES SHALL BE USED BY THE  
6 COUNTY, CITY OR TOWN FOR EDUCATIONAL AND ENFORCEMENT PURPOSES, PROSECUTORIAL  
7 AND JUDICIAL ACTIVITIES AND ALCOHOL ABUSE TREATMENT SERVICES RELATED TO  
8 PREVENTING AND ABATING OPERATING UNDER THE INFLUENCE OCCURRENCES IN A  
9 MOTORIZED WATERCRAFT.

10           ~~3.~~ 4. ~~May~~ SHALL be ordered by a court to perform AT LEAST THIRTY  
11 HOURS OF community restitution. IF THE PERSON FAILS TO COMPLETE THE COMMUNITY  
12 RESTITUTION ORDERED PURSUANT TO THIS PARAGRAPH, THE COURT MAY ORDER  
13 ALTERNATIVE SANCTIONS IF THE COURT DETERMINES THAT ALTERNATIVE SANCTIONS ARE  
14 MORE APPROPRIATE.

15           ~~4.~~ 5. Shall pay an additional assessment of one thousand two hundred  
16 fifty dollars to be deposited by the state treasurer in the prison  
17 construction and operations fund established by section 41-1651. This  
18 assessment is not subject to any surcharge. If the conviction occurred in  
19 the superior court or a justice court, the court shall transmit the assessed  
20 monies to the county treasurer. If the conviction occurred in a municipal  
21 court, the court shall transmit the assessed monies to the city treasurer.  
22 The city or county treasurer shall transmit the monies received to the state  
23 treasurer.

24           ~~5.~~ 6. Shall pay an additional assessment of one thousand two hundred  
25 fifty dollars to be deposited by the state treasurer in the state general  
26 fund. This assessment is not subject to any surcharge. If the conviction  
27 occurred in the superior court or a justice court, the court shall transmit  
28 the assessed monies to the county treasurer. If the conviction occurred in a  
29 municipal court, the court shall transmit the assessed monies to the city  
30 treasurer. The city or county treasurer shall transmit the monies received  
31 to the state treasurer.

32           G. Notwithstanding subsection F, paragraph 1 of this section, at the  
33 time of sentencing, IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION  
34 A, PARAGRAPH 1 OF THIS SECTION, the judge may suspend all but sixty days of  
35 the sentence if the person completes a court ordered alcohol or other drug  
36 screening, education or treatment program. If the person fails to complete  
37 the court ordered alcohol or other drug screening, education or treatment  
38 program and has not been placed on probation, the court shall issue an order  
39 to show cause as to why the remaining jail sentence should not be served.

40           H. In applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection F  
41 of this section, the dates of the commission of the offense shall be the  
42 determining factor, irrespective of the sequence in which the offenses were  
43 committed.

44           I. A second violation for which a conviction occurs as provided in  
45 this section shall not include a conviction for an offense arising out of the  
46 same series of acts.

47           J. A person who is convicted of a violation of this section is guilty  
48 of a class 1 misdemeanor.

1 K. For the purposes of this section, "alcohol concentration" means  
2 grams of alcohol per one hundred milliliters of blood or grams of alcohol per  
3 two hundred ten liters of breath.

4 Sec. 12. Section 8-343, Arizona Revised Statutes, is amended to read:

5 8-343. Disposition of offenses involving driving or in actual  
6 physical control of a motor vehicle while under the  
7 influence of intoxicating liquor or drugs

8 A. A juvenile who is adjudicated delinquent for a violation of section  
9 28-1381 or 28-1382 shall be incarcerated for a period of twenty-four  
10 consecutive hours.

11 B. A juvenile who within a period of ~~sixty~~ EIGHTY-FOUR months is  
12 adjudicated delinquent for a violation of section 28-1381 or 28-1382 and who  
13 has previously been adjudicated for a violation of section 28-1381, 28-1382  
14 or 28-1383 or an act in another state, a court of the United States or a  
15 tribal court that if committed in this state would be a violation of section  
16 28-1381, 28-1382 or 28-1383 shall be incarcerated for a period of thirty  
17 consecutive days that shall be served in a juvenile detention center or in  
18 the department of juvenile corrections.

19 C. A juvenile who is adjudicated delinquent for a violation of section  
20 28-1383 shall be sentenced as provided in section 28-1383, except that ~~the~~  
21 ~~provisions of~~ section 13-801 ~~do~~ DOES not apply and any incarceration shall be  
22 served in a juvenile detention center or in the department of juvenile  
23 corrections.

24 D. If a juvenile is adjudicated delinquent for a violation of section  
25 28-1381, 28-1382 or 28-1383, the court shall order the juvenile to pay at  
26 least one hundred dollars but not more than five hundred dollars plus any  
27 applicable surcharges and assessments to the public agency processing the  
28 violation or the court may order the juvenile to perform at least eighty  
29 hours of community restitution under the supervision of the court.

30 E. The dates of the commission of the offense shall be the determining  
31 factor in applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection B of  
32 this section, irrespective of the sequence in which the offenses were  
33 committed. A second violation for which a conviction occurs as provided in  
34 this section shall not include a conviction for an offense arising out of the  
35 same series of acts.

36 F. In addition to any other penalties prescribed by law, if a juvenile  
37 is adjudicated delinquent for a violation of section 28-1381, 28-1382 or  
38 28-1383, the court shall order the juvenile to complete alcohol or other drug  
39 screening that is provided by a facility approved by the department of health  
40 services or a probation department. If the court determines that the  
41 juvenile requires further alcohol or other drug education or treatment, the  
42 juvenile may be required pursuant to court order to obtain education or  
43 treatment under the court's supervision from an approved facility. The court  
44 may review an education or treatment determination at the request of the  
45 state or the defendant or on the court's initiative. The juvenile shall pay  
46 the costs of the screening, education or treatment unless the court waives  
47 part or all of the costs. The court may order the parent or guardian of the  
48 juvenile to pay part or all of the costs of the screening, education or  
49 treatment.

1           Sec. 13. Section 9-499.07, Arizona Revised Statutes, is amended to  
2 read:

3           9-499.07. Prisoner work, community restitution work and home  
4           detention program; eligibility; monitoring;  
5           procedures; home detention for persons sentenced  
6           for driving under the influence of alcohol or drugs

7           A. A city or town may establish a prisoner work, community restitution  
8 work and home detention program for eligible sentenced prisoners, which shall  
9 be treated the same as confinement in jail. The presiding judge of the city  
10 or town municipal court shall approve the program before its implementation.

11           B. A prisoner is not eligible for a prisoner work, community  
12 restitution work and home detention program if any of the following applies:

13           1. The prisoner is found by the city or town to constitute a risk to  
14 either himself or other members of the community.

15           2. The prisoner has a past history of violent behavior.

16           3. The sentencing judge states at the time of the sentence that the  
17 prisoner may not be eligible for a prisoner work, community restitution work  
18 and home detention program.

19           C. For prisoners who are selected for the program, the city or town  
20 may require electronic monitoring in the prisoner's home whenever the  
21 prisoner is not at the prisoner's regular place of employment or while the  
22 prisoner is assigned to a community work task. If electronic monitoring is  
23 required, the prisoner shall remain under the control of a home detention  
24 device that constantly monitors the prisoner's location in order to determine  
25 that the prisoner has not left the prisoner's premises. In all other cases,  
26 the city or town shall implement a system of monitoring using telephone  
27 contact or other appropriate methods to assure compliance with the home  
28 detention requirements. The city or town may place appropriate restrictions  
29 on prisoners in the program, including testing prisoners for consumption of  
30 alcoholic beverages or drugs or prohibiting association with individuals who  
31 are determined to be detrimental to the prisoner's successful participation  
32 in the program.

33           D. If a prisoner is placed on electronic monitoring pursuant to  
34 subsection C of this section, the prisoner shall pay an electronic monitoring  
35 fee in an amount ranging from zero to full cost and thirty dollars per month  
36 while on electronic monitoring, unless, after determining the inability of  
37 the prisoner to pay these fees, the city or town assesses a lesser fee. The  
38 CITY OR TOWN SHALL USE THE fees collected ~~shall be used by the city or town~~  
39 to offset operational costs of the program.

40           E. Prisoners who are selected for the home detention program shall be  
41 employed within the county in which the city or town is located. The city or  
42 town shall review the place of employment to determine whether it is  
43 appropriate for a home detention prisoner. If the prisoner is terminated  
44 from employment or does not come to work, the employer shall notify the city  
45 or town. Alternatively, or in addition, a community restitution work  
46 assignment may be made by the city or town to a program recommended by the  
47 community restitution work committee. If a prisoner is incapable of  
48 performing community restitution or being employed, the city or town may  
49 exempt the prisoner from these programs.

1 F. The city or town may require that a prisoner who is employed during  
2 the week also participate in community restitution work programs on weekends.

3 G. The city or town may allow prisoners to be away from home detention  
4 for special purposes, including church attendance, medical appointments or  
5 funerals.

6 H. Community restitution work shall include public works projects  
7 operated and supervised by the city or town or other public agencies of this  
8 state or projects sponsored and supervised by public or private community  
9 oriented organizations and agencies.

10 I. A city or town implementing a program under this section shall  
11 appoint a community restitution work committee. The committee shall  
12 recommend to the city or town appropriate community restitution work projects  
13 for home detention prisoners. Members are not eligible to receive  
14 compensation.

15 J. At any time the city or town may terminate a prisoner's  
16 participation in the prisoner work, community restitution work and home  
17 detention program and require that the prisoner complete the remaining term  
18 of the prisoner's sentence in jail confinement.

19 K. Nothing in this section shall prohibit a city or town from entering  
20 into a joint exercise of powers agreement pursuant to section 11-952 for a  
21 prisoner work, community restitution work and home detention program.

22 L. If authorized by the court, a person who is sentenced pursuant to  
23 section 28-1381 or 28-1382 shall not be placed under home detention in a  
24 prisoner work, community restitution work and home detention program except  
25 as provided in subsections M through R of this section.

26 M. By a majority vote of the full membership of the governing body of  
27 the municipality after a public hearing and a finding of necessity, a city or  
28 town may establish a home detention program for persons who are sentenced to  
29 jail confinement pursuant to section 28-1381 or 28-1382. A prisoner who is  
30 placed under the program established pursuant to this subsection shall bear  
31 the cost of all testing, monitoring and enrollment in alcohol or substance  
32 abuse programs unless, after determining the inability of the prisoner to pay  
33 the cost, the court assesses a lesser amount. The city or town shall use the  
34 collected monies to offset operational costs of the program.

35 N. If the city or town establishes a home detention program under  
36 subsection M of this section, a prisoner must meet the following eligibility  
37 requirements for the program:

38 1. Subsection B of this section applies in determining eligibility  
39 for the program.

40 2. If the prisoner is sentenced under section 28-1381, subsection I,  
41 the prisoner first serves a minimum of twenty-four consecutive hours in jail.

42 3. Notwithstanding section 28-1387, subsection C, if the prisoner is  
43 sentenced under section 28-1381, subsection K or section 28-1382, subsection  
44 D or ~~F~~ E, the prisoner first serves a minimum of fifteen consecutive days in  
45 jail before being placed under home detention.

46 4. The prisoner is required to comply with all of the following  
47 provisions for the duration of the prisoner's participation in the home  
48 detention program:

49 (a) All of the provisions of subsections C through H of this section.

1 (b) Testing at least once a day for the use of alcoholic beverages or  
2 drugs by a scientific method that is not limited to urinalysis or a breath or  
3 intoxication test in the prisoner's home or at the office of a person  
4 designated by the court to conduct these tests.

5 (c) Participation in an alcohol or drug program, or both. These  
6 programs shall be accredited by the department of health services or a county  
7 probation department.

8 (d) Prohibition of association with any individual determined to be  
9 detrimental to the prisoner's successful participation in the program.

10 (e) All other provisions of the sentence imposed.

11 5. Any additional eligibility criteria that the city or town may  
12 impose.

13 0. If a city or town establishes a home detention program under  
14 subsection M of this section, the court, on placing the prisoner in the  
15 program, shall require electronic monitoring in the prisoner's home and, if  
16 consecutive hours of jail time are ordered, shall require the prisoner to  
17 remain at home during the consecutive hours ordered. The detention device  
18 shall constantly monitor the prisoner's location to ensure that the prisoner  
19 does not leave the premises. Nothing in this subsection shall be deemed to  
20 waive the minimum jail confinement requirements under subsection N, paragraph  
21 2 of this section.

22 P. The court shall terminate a prisoner's participation in the home  
23 detention program and require the prisoner to complete the remaining term of  
24 the jail sentence by jail confinement if:

25 1. The prisoner fails to successfully complete a court ordered alcohol  
26 or drug screening, counseling, education and treatment program pursuant to  
27 subsection N, paragraph 4, subdivision (c) of this section or section  
28 28-1381, subsection J or L ~~or violates an order pursuant to section 28-1382,~~  
29 ~~subsection E or G.~~

30 2. The court finds that the prisoner left the premises without  
31 permission of the court or supervising authority during a time the prisoner  
32 is ordered to be on the premises.

33 Q. At any other time the court may terminate a prisoner's  
34 participation in the home detention program and require the prisoner to  
35 complete the remaining term of the jail sentence by jail confinement.

36 R. The governing body of the city or town may terminate the program  
37 established under subsection M of this section by a majority vote of the full  
38 membership of the governing body.

39 Sec. 14. Section 11-459, Arizona Revised Statutes, is amended to read:

40 11-459. Prisoner work, community restitution work and home  
41 detention program; eligibility; monitoring;  
42 procedures; home detention for persons sentenced for  
43 driving under the influence of alcohol or drugs;  
44 community restitution work committee; members; duties

45 A. The sheriff may establish a prisoner work, community restitution  
46 work and home detention program for eligible sentenced prisoners, which shall  
47 be treated the same as confinement in jail and shall fulfill the sheriff's  
48 duty to take charge of and keep the county jail and prisoners.

1           B. A prisoner is not eligible for a prisoner work, community  
2           restitution work and home detention program if any of the following applies:

3           1. After independent review and determination of the jail's  
4           classification program, the prisoner is found by the sheriff to constitute a  
5           risk to either himself or other members of the community.

6           2. The prisoner has a past history of violent behavior.

7           3. The prisoner has been convicted of a serious offense as defined in  
8           section 13-604 or has been determined to be a dangerous and repetitive  
9           offender.

10          4. Jail time is being served as a result of a felony conviction.

11          5. The sentencing judge states at the time of the sentence that the  
12          prisoner may not be eligible for a prisoner work, community restitution work  
13          and home detention program.

14          6. The prisoner is sentenced to a county jail and is being held for  
15          another jurisdiction.

16          C. For prisoners who are selected for the program, the sheriff may  
17          require electronic monitoring in the prisoner's home whenever the prisoner is  
18          not at the prisoner's regular place of employment or while the prisoner is  
19          assigned to a community work task. If electronic monitoring is required, the  
20          prisoner shall remain under the control of a home detention device that  
21          constantly monitors the prisoner's location in order to determine that the  
22          prisoner has not left the prisoner's premises. In all other cases, the  
23          sheriff shall implement a system of monitoring using visitation, telephone  
24          contact or other appropriate methods to assure compliance with the home  
25          detention requirements. The sheriff may place appropriate restrictions on  
26          prisoners in the program, including testing prisoners for consumption of  
27          alcoholic beverages or drugs or prohibiting association with individuals who  
28          are determined to be detrimental to the prisoner's successful participation  
29          in the program.

30          D. If a prisoner is placed on electronic monitoring pursuant to  
31          subsection C of this section, the prisoner shall pay an electronic monitoring  
32          fee in an amount ranging from zero to full cost and thirty dollars per month  
33          while on electronic monitoring, unless, after determining the inability of  
34          the prisoner to pay these fees, the sheriff assesses a lesser fee. The  
35          SHERIFF SHALL USE THE fees collected ~~shall be used by the sheriff~~ to offset  
36          operational costs of the program.

37          E. Prisoners who are selected for the home detention program shall be  
38          employed in the county in which they are incarcerated. The sheriff shall  
39          review the place of employment to determine whether it is appropriate for a  
40          home detention prisoner. If the prisoner is terminated from employment or  
41          does not come to work, the employer shall notify the sheriff's office.  
42          Alternatively, or in addition, a community restitution work assignment may be  
43          made by the sheriff to a program recommended to the sheriff by the community  
44          restitution work committee. If a prisoner is incapable of performing  
45          community restitution or being employed, the sheriff may exempt the prisoner  
46          from these programs.

47          F. The sheriff may require that a prisoner who is employed during the  
48          week also participate in community restitution work programs on weekends.

1           G. The sheriff may allow prisoners to be away from home detention for  
2 special purposes, including church attendance, medical appointments or  
3 funerals. The standard for review and determination of such leave is the  
4 same as that implemented to decide transportation requests for similar  
5 purposes made by prisoners WHO ARE confined in the county jail.

6           H. Community restitution work shall include public works projects  
7 operated and supervised by public agencies of this state or counties, cities  
8 or towns on recommendation of the community restitution work committee and  
9 approval of the sheriff. The community restitution work committee may also  
10 recommend and the sheriff may approve other forms of community restitution  
11 work sponsored and supervised by public or private community oriented  
12 organizations and agencies.

13           I. The community restitution work committee is established in each  
14 county and is composed of two designees of the sheriff, a representative of  
15 the county attorney's office selected by the county attorney, a  
16 representative of a local police agency selected by the police chief of the  
17 largest city in the county and three persons selected by the county board of  
18 supervisors from the private sector. A sheriff's designee shall serve as  
19 committee chairman and schedule all meetings. The committee shall meet as  
20 often as necessary, but no less than once every three months, for the purpose  
21 of considering and recommending appropriate community restitution work  
22 projects for home detention prisoners. The committee shall make its  
23 recommendations to the sheriff. Members are not eligible to receive  
24 compensation.

25           J. At any time the sheriff may terminate a prisoner's participation in  
26 the prisoner work, community restitution work and home detention program and  
27 require that the prisoner complete the remaining term of the prisoner's  
28 sentence in jail confinement.

29           K. If authorized by the court, a person who is sentenced pursuant to  
30 section 28-1381 or 28-1382 shall not be placed under home detention in a  
31 prisoner work, community restitution work and home detention program except  
32 as provided in subsections L through Q of this section.

33           L. By a majority vote of the full membership of the board of  
34 supervisors after a public hearing and a finding of necessity a county may  
35 authorize the sheriff to establish a home detention program for persons who  
36 are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If  
37 the board ~~authorized~~ AUTHORIZES the establishment of a home detention  
38 program, a county sheriff may establish the program. A prisoner who is  
39 placed under the program established pursuant to this subsection shall bear  
40 the cost of all testing, monitoring and enrollment in alcohol or substance  
41 abuse programs unless, after determining the inability of the prisoner to pay  
42 the cost, the court assesses a lesser amount. The county shall use the  
43 collected monies to offset operational costs of the program.

44           M. If a county sheriff establishes a home detention program under  
45 subsection L of this section, a prisoner must meet the following eligibility  
46 requirements for the program:

47           1. Subsection B of this section applies in determining eligibility  
48 for the program.



1           2. If the prisoner is sentenced under section 28-1381, subsection I,  
2 the prisoner first serves a minimum of twenty-four consecutive hours in jail.

3           3. Notwithstanding section 28-1387, subsection C, if the prisoner is  
4 sentenced under section 28-1381, subsection K or section 28-1382, subsection  
5 D or ~~F~~ E, the prisoner first serves a minimum of fifteen consecutive days in  
6 jail before being placed under home detention.

7           4. The prisoner is required to comply with all of the following  
8 requirements for the duration of the prisoner's participation in the home  
9 detention program:

10           (a) All of the provisions of subsections C through H of this section.

11           (b) Testing at least once a day for the use of alcoholic beverages or  
12 drugs by a scientific method that is not limited to urinalysis or a breath or  
13 intoxication test in the prisoner's home or at the office of a person  
14 designated by the court to conduct these tests.

15           (c) Participation in an alcohol or drug program, or both. These  
16 programs shall be accredited by the department of health services or a county  
17 probation department.

18           (d) Prohibition of association with any individual determined to be  
19 detrimental to the prisoner's successful participation in the program.

20           (e) All other provisions of the sentence imposed.

21           5. Any additional eligibility criteria that the county may impose.

22           N. If a county sheriff establishes a home detention program under  
23 subsection L of this section, the court, on placing the prisoner in the  
24 program, shall require electronic monitoring in the prisoner's home and, if  
25 consecutive hours of jail time are ordered, shall require the prisoner to  
26 remain at home during the consecutive hours ordered. The detention device  
27 shall constantly monitor the prisoner's location to ensure that the prisoner  
28 does not leave the premises. Nothing in this subsection shall be deemed to  
29 waive the minimum jail confinement requirements under subsection M, paragraph  
30 2 of this section.

31           O. The court shall terminate a prisoner's participation in the home  
32 detention program and shall require the prisoner to complete the remaining  
33 term of the jail sentence by jail confinement if either:

34           1. The prisoner fails to successfully complete a court ordered alcohol  
35 or drug screening, counseling, education and treatment program pursuant to  
36 subsection M, paragraph 4, subdivision (c) of this section or section  
37 28-1381, subsection J or L ~~or violates an order pursuant to section 28-1382,~~  
38 ~~subsection E or G.~~

39           2. The prisoner leaves the premises during a time that the prisoner is  
40 ordered to be on the premises without permission of the court or supervising  
41 authority.

42           P. At any other time the court may terminate a prisoner's  
43 participation in the home detention program and require the prisoner to  
44 complete the remaining term of the jail sentence by jail confinement.

45           Q. The sheriff may terminate the program at any time.

46           R. A person who is sentenced pursuant to section 28-1383 shall not be  
47 placed under home detention in a prisoner work, community restitution work  
48 and home detention program.

1           Sec. 15. Section 28-1303, Arizona Revised Statutes, is amended to  
2 read:

3           28-1303. Oversight council on driving or operating under the  
4           influence abatement

5           A. The oversight council on driving or operating under the influence  
6 abatement is established consisting of the following ten members:

7           1. The director of the department of public safety or the director's  
8 designee.

9           2. The assistant director for the motor vehicle division of the  
10 department of transportation or the assistant director's designee.

11           3. The director of the governor's office of highway safety.

12           4. One member of the public who is appointed by the governor.

13           5. One member of the public who is appointed by the speaker of the  
14 house of representatives.

15           6. One member of the public who is appointed by the president of the  
16 senate.

17           7. One municipal law enforcement member who is appointed by the  
18 governor on the recommendation of an Arizona association of chiefs of police.

19           8. One county law enforcement member who is appointed by the governor  
20 on the recommendation of an Arizona county sheriff's association.

21           9. One city prosecutor who is appointed by the governor on the  
22 recommendation of the Arizona prosecuting attorney's advisory council.

23           10. One county attorney who is appointed by the governor on the  
24 recommendation of the Arizona prosecuting attorney's advisory council.

25           B. Members appointed pursuant to subsection A, paragraphs 4, 5, 6, 7,  
26 8, 9 and 10 of this section serve three year staggered terms.

27           C. Members appointed pursuant to subsection A, paragraphs 1, 2 and 3  
28 of this section shall serve as advisory nonvoting members of the council.

29           D. The voting members of the council shall annually elect a  
30 chairperson from among the members. ~~A member shall not serve consecutive~~  
31 ~~terms as chairperson.~~

32           E. Members of the council are not eligible to receive compensation,  
33 but members who are appointed pursuant to subsection A, paragraphs 4, 5, 6,  
34 7, 8, 9 and 10 of this section are eligible for reimbursement of expenses  
35 pursuant to title 38, chapter 4, article 2.

36           F. The oversight council on driving or operating under the influence  
37 abatement may use the facilities for meeting and the staff of the Arizona  
38 criminal justice commission.

39           G. The oversight council on driving or operating under the influence  
40 abatement may enter into interagency agreements with the Arizona criminal  
41 justice commission and other agencies for agency business.

42           H. The council shall:

43           1. Make grants from the driving under the influence abatement fund  
44 established by section 28-1304 to political subdivisions and tribal  
45 governments that apply for monies for enforcement purposes, prosecutorial and  
46 judicial activities and alcohol abuse treatment services related to  
47 preventing and abating driving or operating under the influence occurrences  
48 in a motor vehicle or a motorized watercraft as defined in section 5-301.

1           2. Make grants from the driving under the influence abatement fund  
2 established by section 28-1304 to innovative programs that use emerging  
3 technologies to educate, prevent or deter occurrences of driving or operating  
4 under the influence in a motor vehicle or a motorized watercraft.

5           3. Receive quarterly reports from the entities receiving grants and  
6 evaluate their effectiveness. The council may make additional grants to the  
7 recipients and oversee the progress of those programs.

8           4. On or before December 1 of each year, submit a written report on  
9 the effectiveness of the grants provided in reducing the incidence of driving  
10 or operating under the influence to the governor, the speaker of the house of  
11 representatives, ~~AND~~ the president of the senate and shall provide a copy of  
12 this report to the secretary of state and the director of the Arizona state  
13 library, archives and public records.

14       Sec. 16. Section 28-1304, Arizona Revised Statutes, is amended to  
15 read:

16       28-1304. Driving under the influence abatement fund

17       A. The driving under the influence abatement fund is established  
18 consisting of monies deposited pursuant to section 28-1382, subsection D,  
19 paragraph 3 and subsection ~~F~~ E, paragraph 3 and section 28-1383, subsection  
20 J, paragraph 2.

21       B. The oversight council on driving or operating under the influence  
22 abatement established by section 28-1303 shall administer the fund.

23       C. Twenty-five per cent of the monies deposited in the fund shall be  
24 used for grants for innovative programs pursuant to section 28-1303,  
25 subsection H, paragraph 2 and seventy per cent of the monies deposited in the  
26 fund shall be used for grants to political subdivisions and tribal  
27 governments pursuant to section 28-1303, subsection H, paragraph 1.

28       D. Not more than five per cent of the monies deposited in the fund  
29 shall be used for both of the following:

30       1. Administrative purposes of the oversight council on driving or  
31 operating under the influence abatement.

32       2. Payment of the costs of notification prescribed by section 28-1467.

33       E. Monies in the fund are:

34       1. Continuously appropriated.

35       2. Exempt from the provisions of section 35-190 relating to lapsing of  
36 appropriations.

37       F. On notice from the oversight council on driving or operating under  
38 the influence abatement, the state treasurer shall invest and divest monies  
39 in the fund as provided in section 35-313, and monies earned from investments  
40 shall be credited to the fund.

41       Sec. 17. Section 28-1321, Arizona Revised Statutes, is amended to  
42 read:

43       28-1321. Implied consent; tests; refusal to submit to test;  
44                   order of suspension; hearing; review; temporary  
45                   permit; notification of suspension; special ignition  
46                   interlock restricted driver license

47       A. A person who operates a motor vehicle in this state gives consent,  
48 subject to section 4-244, paragraph 33 or section 28-1381, 28-1382 or  
49 28-1383, to a test or tests of the person's blood, breath, urine or other

1       bodily substance for the purpose of determining alcohol concentration or drug  
2       content if the person is arrested for any offense arising out of acts alleged  
3       to have been committed in violation of this chapter or section 4-244,  
4       paragraph 33 while the person was driving or in actual physical control of a  
5       motor vehicle while under the influence of intoxicating liquor or drugs. The  
6       test or tests chosen by the law enforcement agency shall be administered at  
7       the direction of a law enforcement officer having reasonable grounds to  
8       believe that the person was driving or in actual physical control of a motor  
9       vehicle in this state either:

- 10       1. While under the influence of intoxicating liquor or drugs.  
11       2. If the person is under twenty-one years of age, with spirituous  
12       liquor in the person's body.

13       B. After an arrest a violator shall be requested to submit to and  
14       successfully complete any test or tests prescribed by subsection A of this  
15       section, and if the violator refuses the violator shall be informed that the  
16       violator's license or permit to drive will be suspended or denied for twelve  
17       months, or for two years for a second or subsequent refusal within a period  
18       of eighty-four months, unless the violator expressly agrees to submit to and  
19       successfully completes the test or tests. A failure to expressly agree to  
20       the test or successfully complete the test is deemed a refusal. The violator  
21       shall also be informed that:

22       1. If the test results show a blood or breath alcohol concentration of  
23       0.08 or more, or if the results show a blood or breath alcohol concentration  
24       of 0.04 or more and the violator was driving or in actual physical control of  
25       a commercial motor vehicle, the violator's license or permit to drive will be  
26       suspended or denied for not less than ninety consecutive days.

27       2. THE VIOLATOR'S DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY  
28       FOR A LICENSE OR PERMIT OR NONRESIDENT OPERATING PRIVILEGE MAY BE ISSUED OR  
29       REINSTATED FOLLOWING THE PERIOD OF SUSPENSION ONLY IF THE VIOLATOR COMPLETES  
30       ALCOHOL OR OTHER DRUG SCREENING.

31       C. A person who is dead, unconscious or otherwise in a condition  
32       rendering the person incapable of refusal is deemed not to have withdrawn the  
33       consent provided by subsection A of this section and the test or tests may be  
34       administered, subject to section 4-244, paragraph 33 or section 28-1381,  
35       28-1382 or 28-1383.

36       D. If a person under arrest refuses to submit to the test designated  
37       by the law enforcement agency as provided in subsection A of this section:

38       1. The test shall not be given, except as provided in section 28-1388,  
39       subsection E or pursuant to a search warrant.

40       2. The law enforcement officer directing the administration of the  
41       test shall:

- 42       (a) File a certified report of the refusal with the department.  
43       (b) On behalf of the department, serve an order of suspension on the  
44       person that is effective fifteen days after the date the order is served.  
45       (c) Require the immediate surrender of any license or permit to drive  
46       that is issued by this state and that is in the possession or control of the  
47       person.

1 (d) If the license or permit is not surrendered, state the reason why  
2 it is not surrendered.

3 (e) If a valid license or permit is surrendered, issue a temporary  
4 driving permit that is valid for fifteen days.

5 (f) Forward the certified report of refusal, a copy of the completed  
6 notice of suspension, a copy of any completed temporary permit and any driver  
7 license or permit taken into possession under this section to the department  
8 within five days after the issuance of the notice of suspension.

9 E. The certified report is subject to the penalty for perjury as  
10 prescribed by section 28-1561 and shall state all of the following:

11 1. The officer's reasonable grounds to believe that the arrested  
12 person was driving or in actual physical control of a motor vehicle in this  
13 state either:

14 (a) While under the influence of intoxicating liquor or drugs.

15 (b) If the person is under twenty-one years of age, with spirituous  
16 liquor in the person's body.

17 2. The manner in which the person refused to submit to the test or  
18 tests.

19 3. That the person was advised of the consequences of refusal.

20 F. On receipt of the certified report of refusal and a copy of the  
21 order of suspension and on the effective date stated on the order, the  
22 department shall enter the order of suspension on its records unless a  
23 written request for a hearing as provided in this section has been filed by  
24 the accused person. If the department receives only the certified report of  
25 refusal, the department shall notify the person named in the report in  
26 writing sent by mail that:

27 1. Fifteen days after the date of issuance of the notice the  
28 department will suspend the person's license or permit, driving privilege or  
29 nonresident driving privilege.

30 2. The department will provide an opportunity for a hearing if the  
31 person requests a hearing in writing and the request is received by the  
32 department within fifteen days after the notice is sent.

33 G. The order of suspension issued by a law enforcement officer or the  
34 department under this section shall notify the person that:

35 1. The person may submit a written request for a hearing.

36 2. The request for a hearing must be received by the department within  
37 fifteen days after the date of the notice or the order of suspension will  
38 become final.

39 3. The affected person's license or permit to drive or right to apply  
40 for a license or permit or any nonresident operating privilege will be  
41 suspended for twelve months from that date or for two years from that date  
42 for a second or subsequent refusal within a period of eighty-four months.

43 4. THE VIOLATOR'S DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY  
44 FOR A LICENSE OR PERMIT OR NONRESIDENT OPERATING PRIVILEGE MAY BE ISSUED OR  
45 REINSTATED FOLLOWING THE PERIOD OF SUSPENSION ONLY IF THE VIOLATOR COMPLETES  
46 ALCOHOL OR OTHER DRUG SCREENING.

1 H. The order for suspension shall:

2 1. Be accompanied by printed forms that are ready to mail to the  
3 department and that may be filled out and signed by the person to indicate  
4 the person's desire for a hearing.

5 2. Advise the person that unless the person has surrendered any driver  
6 license or permit issued by this state the person's hearing request will not  
7 be accepted, except that the person may certify pursuant to section 28-3170  
8 that the license or permit is lost or destroyed.

9 I. On the receipt of a request for a hearing, the department shall set  
10 the hearing within thirty days in the county in which the person named in the  
11 report resides unless the law enforcement agency filing the certified report  
12 of refusal pursuant to subsection D of this section requests at the time of  
13 its filing that the hearing be held in the county where the refusal occurred.

14 J. A timely request for a hearing stays the suspension until a hearing  
15 is held, except that the department shall not return any surrendered license  
16 or permit to the person but may issue temporary permits to drive that expire  
17 no later than when the department has made its final decision. If the person  
18 is a resident without a license or permit or has an expired license or  
19 permit, the department may allow the person to apply for a **RESTRICTED** license  
20 or permit. If the department determines the person is otherwise entitled to  
21 the license or permit, the department shall issue and retain a **RESTRICTED**  
22 license or permit subject to this section.

23 K. Hearings requested under this section shall be conducted in the  
24 same manner and under the same conditions as provided in section 28-3306.  
25 For the purposes of this section, the scope of the hearing shall include only  
26 the issues of whether:

27 1. A law enforcement officer had reasonable grounds to believe that  
28 the person was driving or was in actual physical control of a motor vehicle  
29 in this state either:

30 (a) While under the influence of intoxicating liquor or drugs.

31 (b) If the person is under twenty-one years of age, with spirituous  
32 liquor in the person's body.

33 2. The person was placed under arrest.

34 3. The person refused to submit to the test.

35 4. The person was informed of the consequences of refusal.

36 L. If the department determines at the hearing to suspend the affected  
37 person's privilege to operate a motor vehicle, the suspension provided in  
38 this section is effective fifteen days after giving written notice of the  
39 suspension, except that the department may issue or extend a temporary  
40 license that expires on the effective date of the suspension. If the person  
41 is a resident without a license or permit or has an expired license or permit  
42 to operate a motor vehicle in this state, the department shall deny to the  
43 person the issuance of a license or permit for a period of twelve months  
44 after the order of suspension becomes effective or for a period of two years  
45 after the order of suspension becomes effective for a second or subsequent  
46 refusal within a period of eighty-four months, **AND MAY REINSTATE THE PERSON'S**  
47 **DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR PERMIT OR**  
48 **NONRESIDENT OPERATING PRIVILEGE FOLLOWING THE PERIOD OF SUSPENSION ONLY IF**  
49 **THE VIOLATOR COMPLETES ALCOHOL OR OTHER DRUG SCREENING.**

1 M. If the suspension order is sustained after the hearing, a motion  
2 for rehearing is not required. Within thirty days after a suspension order  
3 is sustained, the affected person may file a petition in the superior court  
4 to review the final order of suspension or denial by the department in the  
5 same manner provided in section 28-3317. The court shall hear the review of  
6 the final order of suspension or denial on an expedited basis.

7 N. If the suspension or determination that there should be a denial of  
8 issuance is not sustained, the ruling is not admissible in and has no effect  
9 on any administrative, civil or criminal court proceeding.

10 O. If it has been determined under the procedures of this section that  
11 a nonresident's privilege to operate a motor vehicle in this state has been  
12 suspended, the department shall give information EITHER in writing OR BY  
13 ELECTRONIC MEANS of the action taken to the motor vehicle administrator of  
14 the state of the person's residence and of any state in which the person has  
15 a license.

16 P. After completing not less than ninety consecutive days of the  
17 period of suspension required by this section AND ANY ALCOHOL OR OTHER DRUG  
18 SCREENING THAT IS ORDERED BY THE DEPARTMENT PURSUANT TO THIS CHAPTER, a  
19 person whose driving privilege is suspended pursuant to this section may  
20 apply to the department for a special ignition interlock restricted driver  
21 license pursuant to section 28-1401. Unless the certified ignition interlock  
22 period is extended by the department pursuant to section ~~28-1402~~ 28-1461, a  
23 person who is issued a special ignition interlock restricted driver license  
24 as provided in this subsection shall maintain a functioning certified  
25 ignition interlock device in compliance with this chapter during the  
26 remaining period of the suspension prescribed by this section. This  
27 subsection does not apply to a person whose driving privilege is suspended  
28 for a second or subsequent refusal within a period of eighty-four months or a  
29 person who within a period of eighty-four months has been convicted of a  
30 second or subsequent violation of article 3 of this chapter or section 4-244,  
31 paragraph 33 or an act in another jurisdiction that if committed in this  
32 state would be a violation of article 3 of this chapter or section 4-244,  
33 paragraph 33.

34 Sec. 18. Section 28-1382, Arizona Revised Statutes, as amended by Laws  
35 2007, chapter 219, section 2, is amended to read:

36 28-1382. Driving or actual physical control while under the  
37 extreme influence of intoxicating liquor; trial by  
38 jury; sentencing; classification

39 A. It is unlawful for a person to drive or be in actual physical  
40 control of a vehicle in this state if the person has an alcohol concentration  
41 ~~of 0.15 or more~~ AS FOLLOWS within two hours of driving or being in actual  
42 physical control of the vehicle and the alcohol concentration results from  
43 alcohol consumed either before or while driving or being in actual physical  
44 control of the vehicle:

- 45 1. 0.15 OR MORE BUT LESS THAN 0.20.
- 46 2. 0.20 OR MORE.

47 B. A person who is convicted of a violation of this section is guilty  
48 of driving or being in actual physical control of a vehicle while under the  
49 extreme influence of intoxicating liquor.



1 C. At the arraignment, the court shall inform the defendant that the  
2 defendant may request a trial by jury and that the request, if made, shall be  
3 granted.

4 D. A person who is convicted of a violation of this section:

5 1. ~~Except as otherwise provided in this paragraph,~~ Shall be sentenced  
6 to serve not less than thirty consecutive days in jail and is not eligible  
7 for probation or suspension of execution of sentence unless the entire  
8 sentence is served **IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,**  
9 **PARAGRAPH 1 OF THIS SECTION.** A person who ~~has an alcohol concentration of~~  
10 ~~0.20 or more~~ **IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS**  
11 **SECTION** shall be sentenced to serve not less than forty-five consecutive days  
12 in jail and is not eligible for probation or suspension of execution of  
13 sentence unless the entire sentence is served.

14 2. Shall pay a fine of not less than two hundred fifty dollars, except  
15 that a person who ~~has an alcohol concentration of 0.20 or more~~ **IS CONVICTED**  
16 **OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION** shall pay a fine  
17 of not less than five hundred dollars. The fine prescribed in this paragraph  
18 and any assessments, restitution and incarceration costs shall be paid before  
19 the assessment prescribed in paragraph 3 of this subsection.

20 3. Shall pay an additional assessment of two hundred fifty dollars. If  
21 the conviction occurred in the superior court or a justice court, the court  
22 shall transmit the monies received pursuant to this paragraph to the county  
23 treasurer. If the conviction occurred in a municipal court, the court shall  
24 transmit the monies received pursuant to this paragraph to the city  
25 treasurer. The city or county treasurer shall transmit the monies received  
26 to the state treasurer. The state treasurer shall deposit the monies  
27 received in the driving under the influence abatement fund established by  
28 section 28-1304.

29 4. May be ordered by a court to perform community restitution.

30 5. Shall be required by the department, on receipt of the report of  
31 conviction, to equip any motor vehicle the person operates with a certified  
32 ignition interlock device pursuant to section 28-3319. In addition, the  
33 court may order the person to equip any motor vehicle the person operates  
34 with a certified ignition interlock device for more than twelve months  
35 beginning on the date of reinstatement of the person's driving privilege  
36 following a suspension or revocation or on the date of the department's  
37 receipt of the report of conviction, whichever occurs later. The person who  
38 operates a motor vehicle with a certified ignition interlock device under  
39 this paragraph shall comply with article 5 of this chapter.

40 6. Shall pay an additional assessment of one thousand dollars to be  
41 deposited by the state treasurer in the prison construction and operations  
42 fund established by section 41-1651. This assessment is not subject to any  
43 surcharge. If the conviction occurred in the superior court or a justice  
44 court, the court shall transmit the assessed monies to the county treasurer.  
45 If the conviction occurred in a municipal court, the court shall transmit the  
46 assessed monies to the city treasurer. The city or county treasurer shall  
47 transmit the monies received to the state treasurer.

1           7. Shall pay an additional assessment of one thousand dollars to be  
2 deposited by the state treasurer in the state general fund. This assessment  
3 is not subject to any surcharge. If the conviction occurred in the superior  
4 court or a justice court, the court shall transmit the assessed monies to the  
5 county treasurer. If the conviction occurred in a municipal court, the court  
6 shall transmit the assessed monies to the city treasurer. The city or county  
7 treasurer shall transmit the monies received to the state treasurer.

8           ~~E. Notwithstanding subsection D, paragraph 1 of this section, at the~~  
9 ~~time of sentencing if the person has an alcohol concentration of less than~~  
10 ~~0.20, the judge may suspend all but ten days of the sentence if the person~~  
11 ~~completes a court ordered alcohol or other drug screening, education or~~  
12 ~~treatment program. If the person fails to complete the court ordered alcohol~~  
13 ~~or other drug screening, education or treatment program and has not been~~  
14 ~~placed on probation, the court shall issue an order to show cause to the~~  
15 ~~defendant as to why the remaining jail sentence should not be served.~~

16           ~~F.~~ E. If within a period of eighty-four months a person is convicted  
17 of a second violation of this section or is convicted of a violation of this  
18 section and has previously been convicted of a violation of section 28-1381  
19 or 28-1383 or an act in another jurisdiction that if committed in this state  
20 would be a violation of this section or section 28-1381 or 28-1383, the  
21 person:

22           1. ~~Except as otherwise provided in this paragraph,~~ Shall be sentenced  
23 to serve not less than one hundred twenty days in jail, sixty days of which  
24 shall be served consecutively, and is not eligible for probation or  
25 suspension of execution of sentence unless the entire sentence has been  
26 served IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 1  
27 OF THIS SECTION. A person who ~~has an alcohol concentration of 0.20 or more~~  
28 ~~IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION~~  
29 shall be sentenced to serve not less than one hundred eighty days in jail,  
30 ninety of which shall be served consecutively, and is not eligible for  
31 probation or suspension of execution of sentence unless the entire sentence  
32 has been served.

33           2. Shall pay a fine of not less than five hundred dollars, except that  
34 a person who ~~has an alcohol concentration of 0.20 or more~~ IS CONVICTED OF A  
35 VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION shall pay a fine of  
36 not less than one thousand dollars. The fine prescribed in this paragraph  
37 and any assessments, restitution and incarceration costs shall be paid before  
38 the assessment prescribed in paragraph 3 of this subsection.

39           3. Shall pay an additional assessment of two hundred fifty dollars.  
40 If the conviction occurred in the superior court or a justice court, the  
41 court shall transmit the monies received pursuant to this paragraph to the  
42 county treasurer. If the conviction occurred in a municipal court, the court  
43 shall transmit the monies received pursuant to this paragraph to the city  
44 treasurer. The city or county treasurer shall transmit the monies received  
45 to the state treasurer. The state treasurer shall deposit the monies  
46 received in the driving under the influence abatement fund established by  
47 section 28-1304.

1           4. Shall be ordered by a court to perform at least thirty hours of  
2 community restitution.

3           5. Shall have the person's driving privilege revoked for at least one  
4 year. The court shall report the conviction to the department. On receipt  
5 of the report, the department shall revoke the person's driving privilege and  
6 shall require the person to equip any motor vehicle the person operates with  
7 a certified ignition interlock device pursuant to section 28-3319. In  
8 addition, the court may order the person to equip any motor vehicle the  
9 person operates with a certified ignition interlock device for more than  
10 twelve months beginning on the date of reinstatement of the person's driving  
11 privilege following a suspension or revocation or on the date of the  
12 department's receipt of the report of conviction, whichever is later. The  
13 person who operates a motor vehicle with a certified ignition interlock  
14 device under this paragraph shall comply with article 5 of this chapter.

15           6. Shall pay an additional assessment of one thousand two hundred  
16 fifty dollars to be deposited by the state treasurer in the prison  
17 construction and operations fund established by section 41-1651. This  
18 assessment is not subject to any surcharge. If the conviction occurred in  
19 the superior court or a justice court, the court shall transmit the assessed  
20 monies to the county treasurer. If the conviction occurred in a municipal  
21 court, the court shall transmit the assessed monies to the city treasurer.  
22 The city or county treasurer shall transmit the monies received to the state  
23 treasurer.

24           7. Shall pay an additional assessment of one thousand two hundred  
25 fifty dollars to be deposited by the state treasurer in the state general  
26 fund. This assessment is not subject to any surcharge. If the conviction  
27 occurred in the superior court or a justice court, the court shall transmit  
28 the assessed monies to the county treasurer. If the conviction occurred in a  
29 municipal court, the court shall transmit the assessed monies to the city  
30 treasurer. The city or county treasurer shall transmit the monies received  
31 to the state treasurer.

32           ~~G. Notwithstanding subsection F, paragraph 1 of this section, at the~~  
33 ~~time of sentencing, if the person has an alcohol concentration of less than~~  
34 ~~0.20, the judge may suspend all but sixty days of the sentence if the person~~  
35 ~~completes a court ordered alcohol or other drug screening, education or~~  
36 ~~treatment program. If the person fails to complete the court ordered alcohol~~  
37 ~~or other drug screening, education or treatment program and has not been~~  
38 ~~placed on probation, the court shall issue an order to show cause as to why~~  
39 ~~the remaining jail sentence should not be served.~~

40           ~~H.~~ F. In applying the eighty-four month provision of subsection ~~F~~ E  
41 of this section, the dates of the commission of the offense shall be the  
42 determining factor, irrespective of the sequence in which the offenses were  
43 committed.

44           ~~I.~~ G. A second violation for which a conviction occurs as provided in  
45 this section shall not include a conviction for an offense arising out of the  
46 same series of acts.

47           ~~J.~~ H. A person who is convicted of a violation of this section is  
48 guilty of a class 1 misdemeanor.

1           Sec. 19. Repeal

2           Section ~~28-1382~~, Arizona Revised Statutes, as amended by Laws 2007,  
3 chapter 195, section 3, is repealed.

4           Sec. 20. Section 28-1385, Arizona Revised Statutes, is amended to  
5 read:

6           ~~28-1385.~~ Administrative license suspension for driving under  
7                                   the influence or for homicide or assault involving a  
8                                   motor vehicle; report; hearing; summary review;  
9                                   ignition interlock device requirement

10          A. A law enforcement officer shall forward to the department a  
11 certified report as prescribed in subsection B of this section, subject to  
12 the penalty for perjury prescribed by section 28-1561, if both of the  
13 following occur:

14          1. The officer arrests a person for a violation of section 4-244,  
15 paragraph 33, section 28-1381, section 28-1382 or section 28-1383 OR FOR A  
16 VIOLATION OF TITLE 13, CHAPTER 11 OR SECTION 13-1201 OR 13-1204 INVOLVING A  
17 MOTOR VEHICLE.

18          2. The person submits to a blood or breath alcohol test permitted by  
19 section 28-1321, ~~OR ANY OTHER LAW OR A SAMPLE OF BLOOD IS OBTAINED PURSUANT~~  
20 TO SECTION 28-1388 AND THE RESULTS ARE EITHER NOT AVAILABLE OR the results ~~of~~  
21 ~~which~~ indicate either OF THE FOLLOWING:

22          (a) 0.08 or more alcohol concentration in the person's blood or  
23 breath.

24          (b) 0.04 or more alcohol concentration in the person's blood or breath  
25 if the person was driving or in actual physical control of a commercial motor  
26 vehicle.

27          B. The officer shall make the certified report required by subsection  
28 A of this section on forms supplied or approved by the department. The  
29 report shall state information that is relevant to the enforcement action,  
30 including:

31          1. Information that adequately identifies the arrested person.

32          2. A statement of the officer's grounds for belief that the person was  
33 driving or in actual physical control of a motor vehicle in violation of  
34 section 4-244, paragraph 33, section 28-1381, ~~or~~ section 28-1382 OR SECTION  
35 28-1383 OR COMMITTED A VIOLATION OF TITLE 13, CHAPTER 11 OR SECTION 13-1201  
36 OR 13-1204 INVOLVING A MOTOR VEHICLE.

37          3. A statement that the person was arrested for a violation of section  
38 4-244, paragraph 33, section 28-1381, section 28-1382 or section 28-1383 OR  
39 FOR A VIOLATION OF TITLE 13, CHAPTER 11 OR SECTION 13-1201 OR 13-1204  
40 INVOLVING A MOTOR VEHICLE.

41          4. A report of the results of the ~~chemical~~ BLOOD OR BREATH ALCOHOL  
42 test that was administered.

43          C. The officer shall also serve an order of suspension on the person  
44 on behalf of the department. The order of suspension:

45          1. Is effective fifteen days after the date it is served.

46          2. Shall require the immediate surrender of any license or permit to  
47 drive that is issued by this state and that is in the possession or control  
48 of the person.

1           3. Shall contain information concerning the right to a summary review  
2 and hearing, including information concerning the hearing as required by  
3 section 28-1321, subsections G and H.

4           4. Shall be accompanied by printed forms ready to mail to the  
5 department that the person may fill out and sign to indicate the person's  
6 desire for a hearing.

7           5. Shall be entered on the department's records on receipt of the  
8 report by the officer and a copy of the order of suspension.

9           6. SHALL INFORM THE PERSON THAT THE PERSON'S DRIVING PRIVILEGE,  
10 LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR PERMIT OR NONRESIDENT  
11 OPERATING PRIVILEGE MAY BE ISSUED OR REINSTATED FOLLOWING THE PERIOD OF  
12 SUSPENSION ONLY IF THE PERSON COMPLETES ALCOHOL OR OTHER DRUG SCREENING.

13           7. SHALL CONTAIN INFORMATION ON ALCOHOL OR OTHER DRUG EDUCATION AND  
14 TREATMENT PROGRAMS THAT ARE PROVIDED BY A FACILITY APPROVED BY THE DEPARTMENT  
15 OF HEALTH SERVICES AND THAT MAY BE COMPLETED FOR A REDUCTION IN THE AMOUNT OF  
16 TIME THE PERSON MAY BE REQUIRED TO EQUIP ANY VEHICLE THE PERSON OPERATES WITH  
17 AN IGNITION INTERLOCK DEVICE.

18           D. IF THE BLOOD ALCOHOL CONCENTRATION TEST RESULT IS UNAVAILABLE AT  
19 THE TIME THE TEST IS ADMINISTERED, THE RESULT SHALL BE FORWARDED TO THE  
20 DEPARTMENT BEFORE THE HEARING HELD PURSUANT TO THIS SECTION IN A FORM  
21 PRESCRIBED BY THE DIRECTOR.

22           ~~D.~~ E. If the license or permit is not surrendered pursuant to  
23 subsection C of this section, the officer shall state the reason for the  
24 nonsurrender. If a valid license or permit is surrendered, the officer shall  
25 issue a temporary driving permit that is valid for fifteen days. The officer  
26 shall forward a copy of the completed order of suspension, a copy of any  
27 completed temporary permit and any driver license or permit taken into  
28 possession under this section to the department within five days after the  
29 issuance of the order of suspension along with the report.

30           ~~E.~~ F. The department shall suspend the affected person's license or  
31 permit to drive or right to apply for a license or permit or any nonresident  
32 operating privilege for not less than ninety consecutive days from that date.  
33 IF THE PERSON IS OTHERWISE QUALIFIED, THE DEPARTMENT MAY REINSTATE THE  
34 PERSON'S DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR  
35 PERMIT OR NONRESIDENT OPERATING PRIVILEGE FOLLOWING THE PERIOD OF SUSPENSION  
36 ONLY IF THE VIOLATOR COMPLETES ALCOHOL OR OTHER DRUG SCREENING.

37           ~~F.~~ G. Notwithstanding subsections A through ~~E~~ F of this section, the  
38 department shall suspend the driving privileges of the person described in  
39 subsection A of this section for not less than thirty consecutive days and  
40 shall restrict the driving privileges of the person for not less than sixty  
41 consecutive additional days to travel between the person's place of  
42 employment and residence and during specified periods of time while at  
43 employment, to travel between the person's place of residence and the  
44 person's secondary or postsecondary school, according to the person's  
45 employment or educational schedule, to travel between the person's place of  
46 residence and the office of the person's probation officer for scheduled  
47 appointments or to travel between the person's place of residence and a  
48 screening, education or treatment facility for scheduled appointments if the  
49 person:

1           1. Did not cause A DEATH OR A serious physical injury as defined in  
2 section 13-105 to another person during the course of conduct out of which  
3 the current action arose.

4           2. Has not been convicted of a violation of section 4-244, PARAGRAPH  
5 33, SECTION 28-1381, SECTION 28-1382 or SECTION 28-1383 within eighty-four  
6 months of the date of commission of the acts out of which the current action  
7 arose. The dates of commission of the acts are the determining factor in  
8 applying the eighty-four month provision.

9           3. Has not had the person's privilege to drive suspended pursuant to  
10 this section or section 28-1321 within eighty-four months of the date of  
11 commission of the acts out of which the current action arose.

12           4. PROVIDES SATISFACTORY EVIDENCE TO THE DEPARTMENT OF THE PERSON'S  
13 COMPLETION OF ALCOHOL OR OTHER DRUG SCREENING THAT IS ORDERED BY THE  
14 DEPARTMENT. IF THE PERSON DOES NOT COMPLETE ALCOHOL OR OTHER DRUG SCREENING,  
15 THE DEPARTMENT MAY IMPOSE A NINETY DAY SUSPENSION PURSUANT TO THIS SECTION.

16           ~~G.~~ H. IF THE OFFICER DOES NOT SERVE AN ORDER OF SUSPENSION PURSUANT  
17 TO SUBSECTION C OF THIS SECTION AND if the department ~~receives-only~~ DOES NOT  
18 RECEIVE the report of the results of the blood or breath alcohol test  
19 PURSUANT TO SUBSECTION B, PARAGRAPH 4, BUT SUBSEQUENTLY RECEIVES THE RESULTS  
20 and the results indicate 0.08 or more alcohol concentration in the person's  
21 blood or breath, or ~~show~~ a blood or breath alcohol concentration of 0.04 or  
22 more and the person was driving or in actual physical control of a commercial  
23 motor vehicle, the department shall notify the person named in the report in  
24 writing sent by mail that fifteen days after the date of issuance of the  
25 notice the department will suspend the person's license or permit, driving  
26 privilege or nonresident driving privilege. The notice shall also state that  
27 the department will provide an opportunity for a hearing and administrative  
28 review if the person requests a hearing or review in writing and the request  
29 is received by the department within fifteen days after the notice is sent.

30           ~~H.~~ I. A timely request for a hearing stays the suspension until a  
31 hearing is held, except that the department shall not return any surrendered  
32 license or permit to the person but may issue temporary permits to drive that  
33 expire no later than when the department has made its final decision. If the  
34 person is a resident without a license or permit or has an expired license or  
35 permit, the department may allow the person to apply for a RESTRICTED license  
36 or permit. If the department determines the person is otherwise entitled to  
37 the RESTRICTED license or permit, the department shall issue, but retain, the  
38 license or permit, subject to this section. All hearings requested under  
39 this section shall be conducted in the same manner and under the same  
40 conditions as provided in section 28-3306.

41           ~~I.~~ J. For the purposes of this section, the scope of the hearing  
42 shall include only the following issues:

43           1. Whether the officer had reasonable grounds to believe the person  
44 was driving or was in actual physical control of a motor vehicle while under  
45 the influence of intoxicating liquor.

46           2. Whether the person was placed under arrest for a violation of  
47 section 4-244, paragraph 33, section 28-1381, section 28-1382 or section  
48 28-1383 OR FOR A VIOLATION OF TITLE 13, CHAPTER 11 OR SECTION 13-1201 OR  
49 13-1204 INVOLVING A MOTOR VEHICLE.

1           3. Whether a test was taken, the results of which indicated the  
2 alcohol concentration in the person's blood or breath at the time the test  
3 was administered of either:

4           (a) 0.08 or more.

5           (b) 0.04 or more if the person was driving or in actual physical  
6 control of a commercial motor vehicle.

7           4. Whether the testing method used was valid and reliable.

8           5. Whether the test results were accurately evaluated.

9           ~~J.~~ K. The results of the blood or breath alcohol test shall be  
10 admitted on establishing the requirements in section 28-1323 or 28-1326.

11           ~~K.~~ L. If the department determines at the hearing to suspend the  
12 affected person's privilege to operate a motor vehicle, the suspension  
13 provided in this section is effective fifteen days after giving written  
14 notice of the suspension, except that the department may issue or extend a  
15 temporary license that expires on the effective date of the suspension. If  
16 the person is a resident without a license or permit or has an expired  
17 license or permit to operate a motor vehicle in this state, the department  
18 shall deny the issuance of a license or permit to the person for not less  
19 than ninety consecutive days. THE DEPARTMENT MAY REINSTATE THE PERSON'S  
20 DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR PERMIT OR  
21 NONRESIDENT OPERATING PRIVILEGE FOLLOWING THE PERIOD OF SUSPENSION ONLY IF  
22 THE VIOLATOR COMPLETES ALCOHOL OR OTHER DRUG SCREENING.

23           ~~L.~~ M. A person may apply for a summary review of an order issued  
24 pursuant to this section instead of a hearing at any time before the  
25 effective date of the order. The person shall submit the application in  
26 writing to any department driver license examining office together with any  
27 written explanation as to why the department should not suspend the driving  
28 privilege. The agent of the department receiving the notice shall issue to  
29 the person an additional driving permit that expires twenty days from the  
30 date the request is received. The department shall review all reports  
31 submitted by the officer and any written explanation submitted by the person  
32 and shall determine if the order of suspension should be sustained or  
33 cancelled. The department shall not hold a hearing, and the review is not  
34 subject to title 41, chapter 6. The department shall notify the person of  
35 its decision before the temporary driving permit expires.

36           ~~M.~~ N. If the suspension or determination that there should be a  
37 denial of issuance is not sustained after a hearing or review, the ruling is  
38 not admissible in and does not have any effect on any civil or criminal court  
39 proceeding.

40           ~~N.~~ O. If it has been determined under the procedures of this section  
41 that a nonresident's privilege to operate a motor vehicle in this state has  
42 been suspended, the department shall give information EITHER in writing OR BY  
43 ELECTRONIC MEANS of the action taken to the motor vehicle administrator of  
44 the state of the person's residence and of any state in which the person has  
45 a license.



1           Sec. 21. Section 28-1387, Arizona Revised Statutes, is amended to  
2 read:

3           28-1387. Prior convictions: alcohol or other drug screening.  
4                   education and treatment; license suspension;  
5                   supervised probation; civil liability; procedures

6           A. The court shall allow the allegation of a prior conviction or any  
7 other pending charge of a violation of section 28-1381, 28-1382 or 28-1383 or  
8 an act in another jurisdiction that if committed in this state would be a  
9 violation of section 28-1381, 28-1382 or 28-1383 filed twenty or more days  
10 before the date the case is actually tried and may allow the allegation of a  
11 prior conviction or any other pending charge of a violation of section  
12 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if  
13 committed in this state would be a violation of section 28-1381, 28-1382 or  
14 28-1383 filed at any time before the date the case is actually tried if this  
15 state makes available to the defendant when the allegation is filed a copy of  
16 any information obtained concerning the prior conviction or other pending  
17 charge. Any conviction may be used to enhance another conviction  
18 irrespective of the dates on which the offenses occurred within the  
19 eighty-four month provision. For the purposes of this article, an order of a  
20 juvenile court adjudicating a person delinquent is equivalent to a  
21 conviction.

22           B. In addition to any other penalties prescribed by law, the judge  
23 shall order a person who is convicted of a violation of section 28-1381, ~~or~~  
24 28-1382 OR 28-1383 to complete alcohol or other drug screening that is  
25 provided by a facility approved by the department of health services or a  
26 probation department. If a judge determines that the person requires further  
27 alcohol or other drug education or treatment, the person may be required  
28 pursuant to court order to obtain alcohol or other drug education or  
29 treatment under the court's supervision from an approved facility. The judge  
30 may review an education or treatment determination at the request of the  
31 state, the defendant or the probation officer or on the judge's initiative.  
32 The person shall pay the costs of the screening, education or treatment  
33 unless, after considering the person's ability to pay all or part of the  
34 costs, the court waives all or part of the costs. If a person is referred to  
35 a screening, education or treatment facility, the facility shall report to  
36 the court whether the person has successfully completed the screening,  
37 education or treatment program. THE COURT MAY ACCEPT EVIDENCE OF A PERSON'S  
38 COMPLETION OF AN ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT  
39 PROGRAM PURSUANT TO SECTION 28-1445 AS SUFFICIENT TO MEET THE REQUIREMENTS OF  
40 THIS SECTION OR SECTION 28-1381, 28-1382 OR 28-1383 OR MAY ORDER THE PERSON  
41 TO COMPLETE ADDITIONAL ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR  
42 TREATMENT PROGRAMS. IF A PERSON HAS PREVIOUSLY BEEN ORDERED TO COMPLETE AN  
43 ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM PURSUANT TO  
44 THIS SECTION, THE JUDGE SHALL ORDER THE PERSON TO COMPLETE AN ALCOHOL OR  
45 OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM UNLESS THE COURT  
46 DETERMINES THAT ALTERNATIVE SANCTIONS ARE MORE APPROPRIATE.

1 C. After a person who is sentenced pursuant to section 28-1381,  
2 subsection I has served twenty-four consecutive hours in jail or after a  
3 person who is sentenced pursuant to section 28-1381, subsection K or section  
4 28-1382, subsection D or ~~F~~ E has served forty-eight consecutive hours in  
5 jail and after the court receives confirmation that the person is employed or  
6 is a student, the court may provide in the sentence that the defendant, if  
7 the defendant is employed or is a student and can continue the defendant's  
8 employment or schooling, may continue the employment or schooling for not  
9 more than twelve hours a day nor more than five days a week. The person  
10 shall spend the remaining day, days or parts of days in jail until the  
11 sentence is served and shall be allowed out of jail only long enough to  
12 complete the actual hours of employment or schooling.

13 D. Unless the license of a person convicted under section 28-1381 or  
14 28-1382 has been or is suspended pursuant to section 28-1321 or 28-1385, the  
15 department on receipt of the abstract of conviction of a violation of section  
16 28-1381 or 28-1382 shall suspend the license of the affected person for not  
17 less than ninety consecutive days.

18 E. When the department receives notification that the person meets the  
19 criteria provided in section 28-1385, subsection ~~F~~ G, the department shall  
20 suspend the driving privileges of the person for not less than thirty  
21 consecutive days and shall restrict the driving privileges of the person for  
22 not less than sixty consecutive additional days to travel between any of the  
23 following:

24 1. The person's place of employment and residence and during specified  
25 periods of time while at employment.

26 2. The person's place of residence and the person's secondary or  
27 postsecondary school, according to the person's employment or educational  
28 schedule.

29 3. The person's place of residence and a screening, education or  
30 treatment facility for scheduled appointments.

31 4. The person's place of residence and the office of the person's  
32 probation officer for scheduled appointments.

33 F. If a person is placed on probation for violating section 28-1381 or  
34 28-1382, the probation shall be supervised unless the court finds that  
35 supervised probation is not necessary or the court does not have supervisory  
36 probation services.

37 G. Any political subdivision processing or using the services of a  
38 person ordered to perform community restitution pursuant to section 28-1381  
39 or 28-1382 does not incur any civil liability to the person ordered to  
40 perform community restitution as a result of these activities unless the  
41 political subdivision or its agent or employee acts with gross negligence.

42 H. IF A PERSON FAILS TO COMPLETE THE COMMUNITY RESTITUTION ORDERED  
43 PURSUANT TO SECTION 28-1381, SUBSECTION K OR SECTION 28-1382, SUBSECTION E,  
44 THE COURT MAY ORDER ALTERNATIVE SANCTIONS IF THE COURT DETERMINES THAT  
45 ALTERNATIVE SANCTIONS ARE MORE APPROPRIATE.

46 ~~H~~ I. Except for another violation of this article, the state shall  
47 not dismiss a charge of violating any provision of this article unless there  
48 is an insufficient legal or factual basis to pursue that charge.

1           Sec. 22. Section 28-1402, Arizona Revised Statutes, is amended to  
2 read:

3           28-1402. Issuance of special ignition interlock restricted  
4           driver license: restrictions

5           A. On application pursuant to section 28-1401, subsection A the  
6 department may, and pursuant to section 28-1401, subsection C the department  
7 shall, issue a special ignition interlock restricted driver license that only  
8 allows a person whose class D or class G license has been suspended or  
9 revoked for a first offense of section 28-1321 or section 28-1383, subsection  
10 A, paragraph 3 to operate a motor vehicle that is equipped with a functioning  
11 certified ignition interlock device and only as follows:

12           1. Between the person's place of employment and residence during  
13 specified periods of time while at employment.

14           2. Between the person's place of residence, the person's place of  
15 employment and the person's secondary or postsecondary school according to  
16 the person's employment or educational schedule.

17           3. Between the person's place of residence and a screening, education  
18 or treatment facility for scheduled appointments.

19           4. Between the person's place of residence and the office of the  
20 person's probation officer for scheduled appointments.

21           5. Between the person's place of residence and the office of a  
22 physician or other health care professional.

23           6. Between the person's place of residence and a certified ignition  
24 interlock device service facility.

25           B. The department may only issue a special ignition interlock  
26 restricted driver license to an applicant who is otherwise qualified by law.

27           ~~C. For as long as the person maintains a functioning certified~~  
28 ~~ignition interlock device in the vehicle pursuant to this chapter, each time~~  
29 ~~an installer obtains information recorded by a certified ignition interlock~~  
30 ~~device the installer shall electronically provide in a form prescribed by the~~  
31 ~~department the following information:~~

32           ~~1. Any tampering or circumvention.~~

33           ~~2. Any failure to provide proof of compliance or inspection of the~~  
34 ~~certified ignition interlock device as prescribed in section 28-1461.~~

35           ~~3. Any attempts to operate the vehicle with an alcohol concentration~~  
36 ~~exceeding the presumptive limit as prescribed in section 28-1381, subsection~~  
37 ~~G, paragraph 3, or if the person is under twenty-one years of age, attempts~~  
38 ~~to operate the vehicle with any spirituous liquor in the person's body.~~

39           ~~D. The department may extend the special ignition interlock restricted~~  
40 ~~driver license and the certified ignition interlock device period if the~~  
41 ~~department has reasonable grounds to believe that any of the following~~  
42 ~~applies:~~

43           ~~1. The person tampered with the certified ignition interlock device.~~

44           ~~2. The person attempted to operate the vehicle with an alcohol~~  
45 ~~concentration exceeding the presumptive limit as prescribed in section~~  
46 ~~28-1381, subsection G, paragraph 3, or if the person is under twenty-one~~  
47 ~~years of age, the person attempted to operate the vehicle with any spirituous~~  
48 ~~liquor in the person's body, three or more times during the period of license~~  
49 ~~restriction or limitation.~~

1           ~~3. The person failed to provide proof of compliance or inspection as~~  
2 ~~prescribed in section 28-1461.~~

3           ~~E. If the special ignition interlock restricted license is extended~~  
4 ~~pursuant to subsection D of this section, the limitations prescribed in~~  
5 ~~sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the~~  
6 ~~restrictive period of the license ends.~~

7           ~~F.~~ C. Except as provided in section 28-1463, if the department  
8 suspends, revokes, cancels or otherwise rescinds a person's special ignition  
9 interlock restricted license or privilege for any reason, the department  
10 shall not issue a new license or reinstate the special ignition interlock  
11 restricted driver license during the prescribed period of suspension or  
12 revocation or while the person is otherwise ineligible to receive a license.

13           Sec. 23. Section 28-1403, Arizona Revised Statutes, is amended to  
14 read:

15           28-1403. Extension of interlock restricted licenses; hearing;  
16 scope

17           A. A person whose driver license restriction is extended pursuant to  
18 section ~~28-1402~~ 28-1461 may submit to the department a written request for a  
19 hearing. The written request must be received by the department within  
20 fifteen days after the date of the order of extension of the restriction. On  
21 receipt of a request for a hearing, a hearing shall be held within thirty  
22 days.

23           B. Hearings requested pursuant to this section shall be conducted in  
24 the same manner and under the same conditions as provided in section 28-3306.  
25 For the purposes of this section, the scope of the hearing shall include only  
26 the following issues:

27           1. Whether the person was issued a special ignition interlock  
28 restricted driver license.

29           2. Whether the person tampered with the certified ignition interlock  
30 device.

31           3. Whether the person attempted to operate the vehicle with an alcohol  
32 concentration exceeding the presumptive limit as prescribed in section  
33 28-1381, subsection G, paragraph 3, three or more times during the period of  
34 license restriction or limitation. ~~or~~

35           4. If the person is under twenty-one years of age, whether the person  
36 attempted to operate the vehicle with any spirituous liquor in the person's  
37 body ~~three or more times~~ during the period of license restriction or  
38 limitation.

39           ~~4.~~ 5. Whether the person submitted proof of compliance or inspection  
40 as prescribed in section 28-1461.

41           Sec. 24. Section 28-1442, Arizona Revised Statutes, is amended to  
42 read:

43           28-1442. Driving under the influence; records; reporting

44           A. The administrative office of the courts shall report to the  
45 governor's office of highway safety by September 1 of each year for the  
46 previous fiscal year:

47           1. The number of complaints issued charging a violation that include  
48 both sections 28-1381 and 28-1382.

1           2. The number of complaints issued charging a violation that include  
2 either section 28-1381 or 28-1382.

3           B. By September 1 of each year the motor vehicle division shall report  
4 to the governor's office of highway safety the number of ignition interlock  
5 devices ordered to be installed pursuant to sections 28-1381, 28-1382 and  
6 28-1383 for the previous fiscal year.

7           C. BY SEPTEMBER 1 OF EACH YEAR THE MOTOR VEHICLE DIVISION SHALL REPORT  
8 TO THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY THE NUMBER OF IGNITION INTERLOCK  
9 DEVICES THAT ARE CURRENTLY IN USE IN THIS STATE PURSUANT TO AN ORDER TO BE  
10 INSTALLED PURSUANT TO SECTIONS 28-1381, 28-1382 AND 28-1383.

11          ~~C.~~ D. By September 1 of each year each county attorney and municipal  
12 prosecutor shall report to the governor's office of highway safety the number  
13 of cases dismissed pursuant to section 28-1387, subsection ~~H~~ I for the  
14 previous fiscal year.

15          ~~D.~~ E. By October 1 of each year the governor's office of highway  
16 safety shall report the information collected for the previous fiscal year  
17 pursuant to subsections A, B, ~~and~~ C AND D of this section to the president  
18 of the senate and the speaker of the house of representatives.

19          Sec. 25. Title 28, chapter 4, article 4, Arizona Revised Statutes, is  
20 amended by adding section 28-1445, to read:

21          28-1445. Alcohol or other drug screening, education and  
22 treatment; license suspension

23          A. THE DEPARTMENT OF TRANSPORTATION SHALL ORDER A PERSON WHOSE DRIVING  
24 PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR PERMIT OR  
25 NONRESIDENT OPERATING PRIVILEGE IS SUSPENDED PURSUANT TO SECTION 28-1385 TO  
26 COMPLETE ALCOHOL OR OTHER DRUG SCREENING PURSUANT TO THIS CHAPTER. THE  
27 ALCOHOL OR OTHER DRUG SCREENING SHALL BE PROVIDED BY A FACILITY APPROVED BY  
28 THE DEPARTMENT OF HEALTH SERVICES.

29          B. A PERSON WHOSE DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY  
30 FOR A LICENSE OR PERMIT OR NONRESIDENT OPERATING PRIVILEGE IS SUSPENDED  
31 PURSUANT TO SECTION 28-1385 MAY VOLUNTARILY COMPLETE AN ALCOHOL OR OTHER DRUG  
32 EDUCATION OR TREATMENT PROGRAM THAT IS PROVIDED BY A FACILITY APPROVED BY THE  
33 DEPARTMENT OF HEALTH SERVICES.

34          C. THE DEPARTMENT MAY ACCEPT EVIDENCE SATISFACTORY TO THE DEPARTMENT  
35 AND IN A MANNER PRESCRIBED BY THE DEPARTMENT, AFTER CONSULTING WITH THE  
36 ADMINISTRATIVE OFFICE OF THE COURTS, OF A PERSON'S COMPLETION OF ALCOHOL OR  
37 OTHER DRUG SCREENING ORDERED BY THE COURT PURSUANT TO SECTION 28-1381, 28-  
38 1382, 28-1383 OR 28-1387 AS SUFFICIENT TO MEET THE ALCOHOL OR OTHER DRUG  
39 SCREENING REQUIREMENTS OF SECTION 28-1385 AND THIS SECTION OR THE DEPARTMENT  
40 MAY ORDER THE PERSON TO COMPLETE ADDITIONAL ALCOHOL OR OTHER DRUG SCREENING.

41          D. A PERSON WHO IS ORDERED TO COMPLETE ALCOHOL OR OTHER DRUG SCREENING  
42 IS RESPONSIBLE FOR PAYING THE COSTS OF THE SCREENING.

43          E. THE DEPARTMENT SHALL ISSUE A DRIVER LICENSE OR PERMIT OR REINSTATE  
44 A PERSON'S DRIVING PRIVILEGE ONLY IF THE PERSON PROVIDES SATISFACTORY  
45 EVIDENCE TO THE DEPARTMENT THAT THE PERSON HAS COMPLETED ALCOHOL OR OTHER  
46 DRUG SCREENING.

47          F. A PERSON WHO PROVIDES AN ALCOHOL OR OTHER DRUG SCREENING, EDUCATION  
48 OR TREATMENT PROGRAM SHALL ELECTRONICALLY REPORT THE FOLLOWING TO THE  
49 DEPARTMENT IN A FORM PRESCRIBED BY THE DEPARTMENT:

1. THE COMPLETION OF SCREENING PURSUANT TO THIS SECTION.
2. THE FAILURE OF A PERSON TO COMPLETE SCREENING AS ORDERED BY THE DEPARTMENT PURSUANT TO THIS SECTION.
3. THE COMPLETION OR PARTICIPATION OF A PERSON ATTENDING A PROGRAM VOLUNTARILY PURSUANT TO THIS SECTION.

Sec. 26. Section 28-1461, Arizona Revised Statutes, is amended to read:

28-1461. Use of certified ignition interlock devices; reporting

A. If a person's driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402:

1. The person shall:

(a) Pay the costs for installation and maintenance of the certified ignition interlock device.

(b) Provide proof to the department of installation of a functioning certified ignition interlock device in each motor vehicle operated by the person.

(c) Provide proof of compliance to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

(d) Provide proof of inspection of the certified ignition interlock device for accurate operation and the results of the inspection to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

2. The department shall not reinstate the person's driving privilege or issue a special ignition interlock restricted driver license until the person has installed a functioning certified ignition interlock device in each motor vehicle operated by the person and has provided proof of installation to the department.

B. WHILE A PERSON MAINTAINS A FUNCTIONING CERTIFIED IGNITION INTERLOCK DEVICE IN A VEHICLE PURSUANT TO THIS CHAPTER, EACH TIME AN INSTALLER OBTAINS INFORMATION RECORDED BY A CERTIFIED IGNITION INTERLOCK DEVICE THE INSTALLER SHALL ELECTRONICALLY PROVIDE TO THE DEPARTMENT IN A FORM PRESCRIBED BY THE DEPARTMENT THE FOLLOWING INFORMATION:

1. ANY TAMPERING OR CIRCUMVENTION.

2. ANY FAILURE TO PROVIDE PROOF OF COMPLIANCE OR INSPECTION OF THE CERTIFIED IGNITION INTERLOCK DEVICE AS PRESCRIBED IN THIS SECTION.

3. ANY ATTEMPT TO OPERATE THE VEHICLE WITH AN ALCOHOL CONCENTRATION EXCEEDING THE PRESUMPTIVE LIMIT AS PRESCRIBED IN SECTION 28-1381, SUBSECTION G, PARAGRAPH 3 OR, IF THE PERSON IS UNDER TWENTY-ONE YEARS OF AGE, ANY ATTEMPT TO OPERATE THE VEHICLE WITH ANY SPIRITUOUS LIQUOR IN THE PERSON'S BODY.

C. ON REQUEST, THE INSTALLER SHALL PROVIDE THE INFORMATION PRESCRIBED IN SUBSECTION B OF THIS SECTION TO:

1. THE DEPARTMENT OF HEALTH SERVICES AUTHORIZED PROVIDER.

2. THE PROBATION DEPARTMENT THAT IS PROVIDING ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT TO THE PERSON.

3. THE PHYSICIAN, PSYCHOLOGIST OR CERTIFIED SUBSTANCE ABUSE COUNSELOR WHO IS EVALUATING THE PERSON'S ABILITY TO SAFELY OPERATE A MOTOR VEHICLE

1 FOLLOWING A REVOCATION OF THE PERSON'S DRIVING PRIVILEGE AS PRESCRIBED IN  
2 SECTION 28-3315, SUBSECTION D.

3 4. THE COURT.

4 D. THE DEPARTMENT SHALL EXTEND AN IGNITION INTERLOCK RESTRICTED OR  
5 LIMITED DRIVER LICENSE AND THE CERTIFIED IGNITION INTERLOCK DEVICE PERIOD IF  
6 THE DEPARTMENT HAS REASONABLE GROUNDS TO BELIEVE THAT ANY OF THE FOLLOWING  
7 APPLIES:

8 1. THE PERSON TAMPERED WITH OR CIRCUMVENTED THE CERTIFIED IGNITION  
9 INTERLOCK DEVICE.

10 2. THE PERSON ATTEMPTED TO OPERATE THE VEHICLE WITH AN ALCOHOL  
11 CONCENTRATION EXCEEDING THE PRESUMPTIVE LIMIT AS PRESCRIBED IN SECTION  
12 28-1381, SUBSECTION G, PARAGRAPH 3 THREE OR MORE TIMES DURING THE PERIOD OF  
13 LICENSE RESTRICTION OR LIMITATION.

14 3. IF THE PERSON IS UNDER TWENTY-ONE YEARS OF AGE, THE PERSON  
15 ATTEMPTED TO OPERATE THE VEHICLE WITH ANY SPIRITUOUS LIQUOR IN THE PERSON'S  
16 BODY DURING THE PERIOD OF LICENSE RESTRICTION OR LIMITATION.

17 4. THE PERSON FAILED TO PROVIDE PROOF OF COMPLIANCE OR INSPECTION AS  
18 PRESCRIBED IN THIS SECTION.

19 E. IF THE SPECIAL IGNITION INTERLOCK RESTRICTED LICENSE IS EXTENDED  
20 PURSUANT TO SUBSECTION D OF THIS SECTION, THE LIMITATIONS PRESCRIBED IN  
21 SECTIONS 28-1381, 28-1382, 28-1383 AND 28-3319 DO NOT BEGIN UNTIL THE  
22 RESTRICTIVE PERIOD OF THE LICENSE ENDS.

23 ~~B.~~ F. The department shall make a notation on the driving record of a  
24 person whose driving privilege is limited pursuant to section 28-1381,  
25 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section  
26 28-1402 that states that the person shall not operate a motor vehicle unless  
27 it is equipped with a certified ignition interlock device.

28 G. PROOF OF COMPLIANCE DOES NOT INCLUDE A SKIPPED OR MISSED RANDOM  
29 SAMPLE IF THE MOTOR VEHICLE'S IGNITION IS OFF AT THE TIME OF THE SKIPPED OR  
30 MISSED SAMPLE.

31 Sec. 27. Section 28-3319, Arizona Revised Statutes, is amended to  
32 read:

33 28-3319. Action after license suspension, revocation or denial  
34 for driving under the influence or refusal of test;  
35 ignition interlock device requirement; definition

36 A. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320  
37 or 28-3322, the license of a driver or the driving privilege of a nonresident  
38 is suspended or revoked, the department shall not terminate the suspension or  
39 revocation or issue a special ignition interlock restricted driver license,  
40 if applicable, pursuant to chapter 4, article 3.1 of this title until the  
41 person provides proof of financial responsibility pursuant to chapter 9,  
42 article 3 of this title.

43 B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320  
44 or 28-3322, an unlicensed resident is denied a license or permit to operate a  
45 motor vehicle, the department shall not issue a license or permit until the  
46 person provides proof of financial responsibility pursuant to chapter 9,  
47 article 3 of this title.

48 C. If a person whose license or driving privilege is suspended or  
49 revoked pursuant to section 28-1321, 28-1381, 28-1382, ~~or~~ 28-1383 OR 28-1385



1 is ordered, pursuant to section 28-1381, 28-1382, ~~or~~ 28-1383 OR 28-1385, to  
2 attend alcohol or other drug screening, education or treatment, the  
3 department shall not either:

4 1. Terminate the suspension or issue a special ignition interlock  
5 restricted driver license, if applicable, pursuant to chapter 4, article 3.1  
6 of this title until the person provides proof from the treatment facility  
7 that the person has completed or is participating satisfactorily in alcohol  
8 or other drug screening, education or treatment.

9 2. Issue a new license or a special ignition interlock restricted  
10 driver license, if applicable, pursuant to chapter 4, article 3.1 of this  
11 title to operate a motor vehicle after the revocation until the person  
12 provides proof from the facility that the person has completed the court  
13 ordered program.

14 D. On receipt of a report of conviction from a court, the department  
15 shall require any motor vehicle the convicted person operates to be equipped  
16 with a functioning certified ignition interlock device and the convicted  
17 person to meet the requirements prescribed in section 28-1461 ~~for twelve~~  
18 ~~months if any of the following applies~~ AS FOLLOWS:

19 1. FOR TWELVE MONTHS IF:

20 (a) EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION, THE PERSON IS  
21 CONVICTED OF A VIOLATION OF SECTION 28-1381 OR SECTION 28-1382, SUBSECTION A,  
22 PARAGRAPH 1.

23 (b) The department determines that within a period of eighty-four  
24 months ~~a~~ THE person is convicted of a second or subsequent violation of  
25 section 28-1381 OR SECTION 28-1382, SUBSECTION A, PARAGRAPH 1 with a prior  
26 conviction of a violation of section 28-1381, ~~or~~ 28-1382 OR 28-1383 or an act  
27 in another jurisdiction that if committed in this state would be a violation  
28 of section 28-1381, ~~or~~ 28-1382 OR 28-1383.

29 ~~2. The person is sentenced pursuant to section 28-1381 or 28-1382,~~  
30 ~~subsection D, except that if the person's alcohol concentration is 0.20 or~~  
31 ~~more, the certified ignition interlock device is required for eighteen~~  
32 ~~months.~~

33 ~~3. The person is sentenced pursuant to section 28-1382, subsection F,~~  
34 ~~except that if the person's alcohol concentration is 0.20 or more, the~~  
35 ~~certified ignition interlock device is required for twenty four months.~~

36 ~~4. The conviction is for a violation of section 28-1383, subsection A,~~  
37 ~~paragraph 1, 2 or 4 or paragraph 3, subdivision (b).~~

38 2. FOR EIGHTEEN MONTHS IF THE PERSON IS CONVICTED OF A VIOLATION OF  
39 SECTION 28-1382, SUBSECTION A, PARAGRAPH 2.

40 3. FOR TWENTY-FOUR MONTHS IF:

41 (a) THE PERSON IS CONVICTED OF A VIOLATION OF SECTION 28-1382,  
42 SUBSECTION A, PARAGRAPH 2 AND THE DEPARTMENT DETERMINES THAT WITHIN A PERIOD  
43 OF EIGHTY-FOUR MONTHS THE PERSON HAS A PRIOR CONVICTION OF A VIOLATION OF  
44 SECTION 28-1381, 28-1382 OR 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT IF  
45 COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1381, 28-1382 OR  
46 28-1383.

47 (b) THE PERSON IS CONVICTED OF A VIOLATION OF SECTION 28-1383.

48 E. The requirement prescribed in subsection D of this section begins  
49 on the date of reinstatement of the person's driving privilege following a

1 suspension or revocation or on the date of the department's receipt of the  
2 report of conviction, whichever occurs later.

3 F. A person who is required to equip a motor vehicle with a certified  
4 ignition interlock device pursuant to ~~subsection D of~~ this section shall  
5 comply with chapter 4, article 5 of this title.

6 G. THE DEPARTMENT SHALL REDUCE THE TIME PERIOD PRESCRIBED IN  
7 SUBSECTION D, PARAGRAPH 1, SUBDIVISION (a) OF THIS SECTION TO THE LATER OF  
8 SIX MONTHS OR THE COMPLETION OF THE REQUIREMENTS OF THIS SUBSECTION IF ALL OF  
9 THE FOLLOWING APPLY:

10 1. THE PERSON IS SENTENCED PURSUANT TO SECTION 28-1381, SUBSECTION I.

11 2. THE PERSON SUCCESSFULLY COMPLETES AN ALCOHOL OR OTHER DRUG  
12 EDUCATION AND TREATMENT PROGRAM PURSUANT TO SECTION 28-1445, SUBSECTION B OR  
13 SECTION 28-1381.

14 3. THE PERSON HAS MAINTAINED A FUNCTIONING IGNITION INTERLOCK DEVICE  
15 ON ANY MOTOR VEHICLE THE PERSON OPERATES AND HAS MET THE REQUIREMENTS OF  
16 SECTION 28-1461 FOR AT LEAST SIX CONSECUTIVE MONTHS.

17 ~~G.~~ H. For the purposes of this section, "certified ignition interlock  
18 device" has the same meaning prescribed in section 28-1301.

19 Sec. 28. Section 41-1651, Arizona Revised Statutes, is amended to  
20 read:

21 41-1651. Prison construction and operations fund

22 The prison construction and operations fund is established consisting  
23 of monies received pursuant to sections 5-395.01, ~~5-395.03~~, 5-396, 5-397,  
24 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288. The state  
25 department of corrections shall administer the fund. Monies in the fund are  
26 subject to legislative appropriation and shall be used to pay for any costs  
27 related to prison overcrowding and department support and maintenance.

28 Sec. 29. Effective date

29 This act is effective from and after December 31, 2008."

30 Amend title to conform

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